REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO HOME BUILDING (INSURANCE) AMENDMENT ACT 2002

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At Sydney on Monday 22 July 2002

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. Ron Dyer (Chair)

The Hon. John Ryan

WILLIAM PETER MEREDITH, Director of Housing, Master Builders Association of New South Wales, 52 Parramatta Road, Forest Lodge, sworn and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr MEREDITH: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr MEREDITH: Yes, I am.

CHAIR: Would you briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr MEREDITH: I have been with the Master Builders Association for 14 years, the last four years as Director of Housing, and I have been principally the person who has been dealing with the issues pertaining to the home warranty insurance issue.

CHAIR: As you will be aware, the Master Builders Association has made a written submission to this inquiry. Is it your wish that the submission be included as part of your sworn evidence?

Mr MEREDITH: Yes, it is.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, I should add that the House itself does have the right to override our decision in that regard. I now invite you to make a brief opening statement to the Committee if you would like to.

Mr MEREDITH: The Master Builders Association [MBA] thanks the Committee and welcomes the opportunity to give evidence today and speak to our submission. While it has been some weeks since the MBA compiled its submission and the legislation has taken effect, there has been no obvious impact on the surface on builders and consumers in response to the legislation. Indeed, it is doubtful whether the majority of builders are aware of the changes that have taken place and the potential impact of such changes. While the MBA has been endeavouring to advise our membership, this membership only forms a small proportion of the licensed builders in New South Wales.

The legislation was designed to deliver a number of intended outcomes: to stave off the threatened withdrawal by the approved private insurers from the privatised insurance scheme; to attract new insurers and reinsurers; to uniform the privatised insurance schemes in New South Wales and Victoria; to ensure adequate consumer protection; to ensure the ongoing viability of the building industry; and, in respect of New South Wales, to address the issue of the lack of insurance and reinsurance to the residential high-rise sector that had effectively stalled and placed millions of dollars of work at risk.

At a meeting in Melbourne on 5 March 2002 organised by the New South Wales Department of Fair Trading and the Victorian Department of Treasury and Finance, the MBAs of New South Wales and Victoria were told clearly that the proposals for discussion at the meeting would subsequently change the framework of the privatised schemes were designed to address a log of claims put to both governments by the insurers and to stave off their threatened withdrawal.

At this meeting the MBA raised as a matter for urgent consideration the stalled New South Wales high-rise sector and sought exemption from the sector. Also as a priority we saw the need to address the ongoing poor performance standards of the insurance providers and the administrative difficulties in assessment and provisions of insurance leading to unacceptable delays and cost to building practitioners.

The MBA was told that while the plight of builders was of concern, it was considered priority (b) and that priority (a) was to prevent the withdrawal of the insurers. It was affirmed that neither the New South Wales nor Victorian governments wanted to revisit a government-run consumer protection insurance scheme, and it was clear to the MBA that the governments' intent was to preserve the private warranty insurance arrangements.

The home building amendment insurance legislation was introduced in the Parliament on 8 May 2002 and was assented to on 16 May 2002. The legislation came into operation on 1 July 2002. In respect of the intended outcomes previously raised, to date there appears to be very little response to the reforms. While there has been no further exodus of approved insurers or insurance providers from the scheme, the legislation has not attracted additional warranty providers, or indeed attracted additional reinsurance to allow the New South Wales Government to remove its life support for Dexta Corporation, along with government support currently underpinning the provision of insurance for the New South Wales residential high-rise sector.

At a meeting of key stakeholders on 16 April 2002 organised by the Leader of the Opposition, representatives from Royal and Sun Alliance emphasised the importance of the legislation being passed, and implied that new insurers and reinsurers were effectively waiting in the wings to come into the industry once the legislation was passed. We ask: Where are they?

The Housing Industry Association in a communication to the industry promoted that it had successfully lobbied the New South Wales and Victorian governments in adopting substantial reforms to home warranty insurance. It was indicated that the adoption of HIA's reform package would help reduce premiums by about 15 to 20 per cent. I provide copies of the HIA circular to the inquiry.

Document tabled.

I use this HIA communication to emphasise an expectation that due to the benefits delivered to insurers through the legislation there was some expectation that benefits may be passed on to builders and consumers in the form of cheaper premiums. To date there has been no sign of a reduction in home warranty premiums, despite the reduced liability to insurers delivered by the legislation. However, this is not surprising, because the MBA was told by one insurance provider that the reforms were necessary to simply allow the insurers to stay in the market, and would not deliver any benefits to builders in lower premiums and softer assessment criteria.

This position was confirmed by comments by representatives of Royal and Sun Alliance at the meeting with the Leader of the Opposition on 16 April 2002, in which it was indicated that Royal and Sun Alliance would not be reviewing its premiums again until December 2002. Reports from some builders suggest that their premium costs indeed have increased due to provider HIA insurance services relegating them to a lower category of classification. This has prompted suggestions from these builders that premiums are being increased by the “back” door.

There is also no evidence that the legislation and reduced insurance exposure as a result of the approved insurers or providers softening in their excessive and onerous assessment criteria. Deeds of indemnity are still being requested. Capital injection in the form of purchased and registered shares in the builders company has become a common request. Requests for unconditional bank guarantees continue. Builders still complain of phone calls not being returned by insurers or their agents. There are extensive delays and continuing shifting of the goal posts when assessing applications. I submit to the inquiry correspondence from insurance providers to builders requesting substantial securities as I have previously outlined.

Documents tabled.

The Committee will note that the documents have been censored to retain anonymity of the respective builders. Builders have expressed concern in speaking out about their circumstances in that they may prejudice their position with the insurance provider. This is an issue in itself, in that builders have no independent body or person to which to take their grievances in dealing with approved insurers, their brokers or agents. There is no code of conduct that covers insurers, agents and brokers in providing this unique insurance product.

The Home Building Legislation Amendment Bill 2001 introduced a new early dispute intervention process administered by the new Consumer Tenancy and Trader Tribunal, called the Building Conciliation Service. The Home Building Amendment Insurance Act changes the insurance scheme to a scheme of last resort. Accordingly, the effect of the last resort scheme is that fewer claims will proceed where the builder is solvent and still around, and therefore the onus will be on both the consumer and the builder to resolve disputes in matters that previously led to a claim.

While it is recognised that builders will benefit from this change in that they will not be held over by an insurer who can deal with the claim in any way they see fit, it is suggested that the greater burden will be placed upon the Building Conciliation Service and the Consumer Tenancy and Trader Tribunal itself, especially considering that the 2001 reform bill essentially provided the Consumer Tenancy and Trader Tribunal with total jurisdiction of residential building matters.

The Home Building Insurance Act reduces the exposure to insurers for claims for structural work to six years and non-structural defects to two years, previously seven years for all defects subject to statutory warranties. However, the period of liability for builders for defective work remains at seven years, subject to statutory warranties. The new legislation therefore creates an inconsistency in the Home Building Act in providing reduced exposure to insurers. This inconsistency needs to be corrected or at least effectively communicated to consumers and builders who may already have reached the conclusion that all work is now covered for a period of six years for structural defects and two years for non-structural defects.

It has been suggested that the privatised insurance scheme has never attracted a sufficient number of insurers to establish true competition amongst insurers. As stated in our submission, it has also been previously mentioned that the current reforms hopefully will attract more insurers. Additional competition could be meaningless for builders because insurers appear to be reluctant to offer cover where a builder is already eligible or has eligibility with another insurance provider. Insurers seek to establish an exclusive arrangement with builders. The high level of uncertainty and instability with the privatised scheme requires a sensible approach by builders to seek eligibility with more than one provider as a contingency should there be further withdrawals from the scheme.

Recently Royal and Sun Alliance [RSA] announced that their warranty and insurance products would become available through selected agents and brokers other than HIH Insurance Services. While this initiative may create more flexibility for builders, we note that even though the RSA may already have the records of an applicant through HIH Insurance Services, a fresh application must be made through a new agent or broker. Accordingly, builders are now being asked to pay additional fees in order to have their applications assessed and submitted to the RSA. That raises the issue of yet more fees to add to the delays of fees and commissions being demanded from the industry where profit levels are minimal.

In conclusion, it can be clearly stated that while insurers have a benefit from increased premiums and now reduced exposure and the Government has prevented to date the complete collapse of the privatised scheme, the plight of builders continues. The priority and big issues that were described at the Melbourne meeting have not been addressed. Not the slightest control or condition to address the many issues being raised by the builders has been placed on insurers. The industry remains in crisis with expertise exiting the industry at the first opportunity, new entrants reluctant to enter the industry, and increased illegal activity. Thank you for allowing me to make this opening statement.

CHAIR: I ask a question arising not out of the MBA's submission but out of a press report appearing in the *Sydney Morning Herald* on 16 July last week. I quote a short passage of that report:

> The Master Builders Association is negotiating with at least two insurers to create a non-profit corporation offering discounted insurance to select builders, sub-contractors and developers who have exemplary records and sound financial practices.
>
> All members of the Masterbuild Warranty Corporation (MBWC) would have to have prior building experience, trade qualifications and be screened for solvency.

I invite you, if you wish, to say anything you feel appropriate at this stage to the Committee about that proposed initiative by the MBA.

Mr MEREDITH: For some time the MBA has been looking at trying to develop a not-for-profit industry scheme as an alternative to the system that currently runs in New South Wales. In regard to the provision of home warranty insurance, the only successful arrangement or the only arrangement that can work is a not-for-profit scheme—either a government-backed scheme, an industry scheme, or possibly a combination of both. Consequently we have been working for some time now to try to develop this scheme. We have been looking at supporters and backers to help develop this scheme.

We have certainly been talking to insurance companies and insurance providers, not necessarily to operate at the front end, but more to operate at the back end, and to support the scheme in that way. If we present to the industry an industry run scheme, because of the attitude of builders in general towards insurance companies, they are seeking a different approach. They would not be receptive to, and they would be reluctant about being presented with, another scheme when it is perceived that insurance companies have control over the operations of the scheme.

CHAIR: I assume from the quote that I have cited to you that, clearly, the proposed scheme would cover builders with good records. However, I presume that builders with other than good records would not be eligible to join the scheme and they would be left to the existing scheme?

Mr MEREDITH: The approach of the scheme is to encompass all licensed builders across New South Wales and eligibility criteria will apply. However, there would not just be a financial focus on builders. We would focus also on their past performance, their technical capabilities and their business management and other factors would be assessed. That is different to the current situation. Insurers are simply focusing on financial performance rather than taking into account the past performance of builders, longevity in the industry, and other factors.

We are well placed in country and regional areas to utilise various divisions of the association that have been established and to involve builders. We are in a good position to assess the capacity of these builders. In country and regional areas word circulates quite quickly about the performance of local builders and new builders coming to town. We believe that we are in a position to recognise that and to utilise that capacity to assess builders. It puts us in a good position to establish this criteria and not simply to focus on the financial qualifications of builders.

CHAIR: I ask you in general terms to describe for the Committee what I might term the mood of your members in relation to the reforms or changes introduced as a result of the Home Building (Insurance) Amendment Act 2002?

Mr MEREDITH: The overall mood still remains quite hostile, but that is in regard to the privatised scheme. In regard to these amendments, I come back to my opening statement. I believe that, overall, the balance of the industry is not fully aware that substantial amendments have been passed reforming the scheme. Industry is certainly not aware of the impact of those amendments. Builders to whom I have spoken—and that was as recently as Saturday when I briefed some 40 franchised builders—said that they recognise that certain benefits will flow to them from the changed legislation.

But one issue was of more concern to them. I provided an explanation about the reasons behind this legislation being formulated and the fact that it was put together to stave off the threatened withdrawal of insurers. I said that it was put together to reduce the exposure to insurers rather than simply to deliver to the demands of insurers. Builders said to me, "We have had to suffer their demands. We have continued to complain about their excessive criteria and their heavy handedness." However, very little has been done to date to resolve those issues.

CHAIR: At pages 3 and 7 of the MBA's submission you make reference to what is described as inconsistencies created in the principal Act, the Home Building Act 1989, by the implementation of the amending legislation. Can you give a brief explanation to the Committee as to how the MBA sees those inconsistencies and how you think they will impact on builders and consumers? Do you have any view as to how the inconsistencies may be rectified—I assume by amending legislation? Perhaps you might address the matter of the inconsistencies to which I have referred.

Mr MEREDITH: It is suggested that any inconsistencies between sections or parts of the legislation do not assist the parties covered by the legislation in applying and interpreting the provisions. However, the reduction of the period of cover for structural and non-structural defects applies only to part 6 of the insurance Act. Therefore, it applies to insurance contracts or insurance policies. An insurance contract provides a lesser period of cover for insurers—that being six years and two years—but the builder remains vulnerable to a breach of statutory warranties for seven years.

It is suggested that as word spreads in the industry about the changes or the split from the six years and two years for non-structural defects, there will be a general acceptance that these periods—being six years and two years—will allow an overriding period for all defects. In other words, it will be taken by many builders that the complete legislation has now been changed to a period of six years and two years, reverting to similar coverage for defects that applied in the old BSC scheme.

The inconsistency also creates potential debate or disputation between builders and consumers. A consumer, for instance, may raise with a builder a non-structural defect and the builder may dismiss that defect by saying that it is outside the period or outside the time frame when that is not necessarily the case. The current provision, as I mentioned earlier, is isolated to part 6 of the insurance provisions. Therefore, it has just been taken up by that builder. Now he is covered by the six-year or two-year split.

CHAIR: You are saying that there is potential for confusion or lack of understanding in regard to the time specified in the amending legislation as opposed to the period of seven years referred to in the principal Act?

Mr MEREDITH: That is correct, and it initiates debate or dispute about what is the period of coverage and what is not the period of coverage. It also adds yet another layer to the level of liability covering builders. We now have six years for structural defects and two years for non-structural defects for insurance claims under part 6 of the Home Building Act, elsewhere in the Act we have seven years subject to statutory warranties under the Home Building Act, we have 10 years for proportional liability under the Environmental Planning and Assessment Act, then we have unlimited common law extending to subsequent owners. We have various layers of liability, and we see yet another one. Builders often ask what the liability is for their work. It is difficult to respond when you have these additional layers.

CHAIR: It is true to say that the Master Builders Association submission poses the question whether the New South Wales residential building industry and consumers are better off now with the expansion of regulation and a private insurance scheme than they were under the previous Building Services Corporation scheme. I refer particularly to comments made on page 5 of the MBA submission, which says:

> Many in the industry say that despite the criticism of the BSC in the Dodd report, the legacy of the Dodd recommendations (e.g. demise of the BSC and the privatisation of insurance) have been a disaster for the NSW residential building industry.

Later you say:

> However, many of these builders failed to recognise that the level of regulation had grown substantially since 1997 and that this regulatory growth has created distance in replicating the previous BSC scheme.

Could you give the Committee your views about the prevailing perception in the industry about the model the Government has chosen to adopt and the apparent reference to some, or many, builders harking back to the old BSC model?

Mr MEREDITH: Certainly many builders, and it is increasing on a daily basis, are referring back to the previous Building Services Corporation scheme and comparing what we had then with what we have now and the difficulties they face with the privatised scheme. They look at ease of access to insurance, stability in premiums and the reasonable level of consumer protection. But we also need to look at the intended outcomes from privatisation of the scheme. Looking back at the Dodd report, although it was critical of the scheme and referred to the need to disband the one-shop approach by the BSC, et cetera, I have great difficulty trying to understand the motive or the rationale behind the privatisation of the scheme in the first place. However, looking at the intended outcomes of the privatised scheme—to reward good builders and remove shoddy builders from the industry, rid

taxpayers of funding an insurance scheme, attract competition from insurers and therefore reduce premiums, reward and encourage competent and efficient contractors by ensuring ongoing access to insurance cover at a competitive price and complement the privatised scheme with a greater focus on inspections—I would say there is sufficient evidence to show that none of those intended outcomes have been delivered by the privatised scheme.

The Hon. JOHN RYAN: Were you reading from a document when you read that list?

Mr MEREDITH: Only a note that I have put together in response to these questions.

The Hon. JOHN RYAN: I thought you might have been quoting from a document that was current when the scheme was started.

Mr MEREDITH: No. Because of the difficulties facing many builders, they reflect back on what they had and they see that as a panacea to the problems they are facing now. Prior to the passing of the legislation we said that it was very difficult to reflect back on what we had because the growth in consumer protection legislation caused substantial distance from the previous scheme. We have had far broader development in consumer protection legislation since 1997. Therefore you cannot draw comparisons with the previous scheme. However, the passing of this legislation has not only brought us back into line with the level of coverage offered by the BSC scheme, in some areas it has reduced that level of coverage. In fact, the BSC scheme was one of first resort. Under the current legislation we have a scheme of last resort. I am not saying that a scheme of last resort is a bad thing from the point of view of the MBA, but I draw the comparison from what we had in the past to what we have now. I think it is reasonable for builders to draw a comparison to the BSC scheme. As mentioned previously, we now have reduced cover for structural and non-structural defects. That also applied under the BSC scheme, although it was across the board and not just isolated to the insurance provisions. There has been a substantial step backwards in consumer protection. We can now more closely reflect on what we had under the old scheme.

CHAIR: On page 7 of the MBA submission you state that in the view of your organisation there is a lack of control upon the approved insurers to instil what you describe as some fairness. A comment is made that builders do not have a mechanism for their complaints or grievances to be addressed. The submission also states that the New South Wales Government established the New South Wales security of payment system. As Minister for Public Works and Services, I was closely involved in working that up. Essentially, the legislation was enacted to protect subcontractors. You say that efforts to have homeowners included in the security of payment system have been continually denied. Could you give the Committee your views of what controls or conditions you feel should be placed on insurers? For example, are you contemplating a home warranty insurance ombudsman or something of that sort?

Mr MEREDITH: Most certainly there needs to be an independent body or an independent person to whom builders can take their grievances and concerns about the operation of this scheme and the operation of insurers, their agents and brokers to bring about some accountability for insurers, their agents and brokers. Currently, the only body that builders can turn to with their grievances is the Department of Fair Trading. This insurance product is not covered by the code of practice and the Insurance Council of Australia, and that was made known prior to the introduction of the scheme in 1997. There was to be a code of practice or conduct that would apply to the privatised insurers. In fact, a draft code of practice was drawn up prior to the introduction of the scheme, but that was never adopted. Currently, builders are at the mercy of insurers and their brokers. For example, they provide substantial financial information. We hear that this information is lost and they have been requested to submit further information.

Builders are making accusations that for weeks and months they have been given the run-around by the insurers and insurance providers in assessing their applications and that insurers continue to shift the goalposts . Once they have reached the stage where they believe their negotiations are finalised they see the goalposts shift sideways again and further demands are placed on them. In one case a builder made a job application, they brought up his file on the computer and he was told that there was a note on his file that indicated his company was about to be liquidated. The builder responded that he had no idea what it was about. Apparently, that statement was refuted the following day. The builder complained that certain records that simply were not true were attached to his file.

Builders need somewhere to take these grievances and have them investigated. If wrong is being done by insurers and their agents then they need to be made accountable.

It is not just a matter of having an independent person or an independent body, it is also important that the independent person or the independent body have the power or the authority to take action against insurers. Indeed, that would be an interesting exercise in itself when we have only a few insurance providers in the market. There is nothing to keep them in the scheme. They can withdraw from the scheme at any time. Therefore it is expected that if an ombudsman or an authority tried to apply some sort of sanction or make insurers accountable there may be some difficulty in enforcing such sanctions and accountability. But, certainly, there needs to be some independent body where builders can, without fear, raise these grievances and have the confidence to know that their grievances will be investigated without prejudicing their position with the insurers, preventing them from procuring insurance and continuing to work in their businesses.

CHAIR: In referring to an independent body, I assume that the MBA does not feel it to be appropriate to complain direct to the Department of Fair Trading or the Minister regarding the grievances they hold, from time to time, about insurers?

Mr MEREDITH: No, we do not believe that. We believe that it needs to be entirely separate and entirely independent. Insurers, under their ministerial approval, have reporting requirements as a condition of approval. Some time ago when I was trying to get an indication of the level of insolvency, et cetera, in the case of HIH, I cannot speak for the others, the response I got from the department raised in my mind the question of whether insurers were even complying with the conditions of approval and reporting properly to the department.

The Hon. JOHN RYAN: They were not.

CHAIR: Another issue the MBA submission deals with is a suggestion that there could be delays in having disputes dealt with by the CTTT. I note at the top of page four of the submission the point that the CTTT now has jurisdiction over all residential disputes. The view was expressed that therefore the amendment legislation would compound current delays. Are delays in the CTTT a significant concern to your members? Can you explain to the Committee how you think the new legislation will affect current delays?

Mr MEREDITH: First of all, I want to make the point that I understand that the CTTT is getting on top of the backlog of claims that I guess they inherited as a new tribunal. I also make the point that from reports coming back to the Building Conciliation Service I understand it is working quite well. Any delay within the tribunal certainly is a concern for members and builders and quite often they are seeking to recover moneys owed. Again I come back to the point that the security of payment is an issue that is certainly important and seems to be overlooked with regard to residential builders. A common problem we see certainly with final payments and agreed variation in recovery of moneys is that often builders use the tribunal—and in fact in some cases they have no choice but to use the tribunal—to try to seek to recover these moneys. This has to be taken into consideration in the final qualification that insurers are putting on builders and the importance of cash flow and trying to meet the financial demands of the builders. Recovery of moneys is very important and any sort of delay in the recovery of those moneys will affect builders.

Delays are also a concern where builders seek orders against subcontractors or suppliers with counterpressure being applied by consumers where a consumer has brought a claim or put a demand on a builder. The work that is the subject of that claim is work being done by somebody else, be it a subcontractor or materials involved from a supplier. The builder has to subsequently pursue his suppliers or subcontractors to seek to redress or correct the work or re-establish the work that is the concern of the insurers. Again, speedy progression of claims within the tribunal affecting subcontractors and suppliers is also important to builders.

In regards to the second part of the question, the legislation may not be affecting existing delays, however, changing the scheme to a scheme of last resort will mean that less claims are put on insurers and more claims are put on builders. As I mentioned in my opening statement, this is not necessarily a bad thing because builders are far happier to deal with claims or problems with the consumer than having the consumer simply determine the contract and then go and put a claim with

the insurer and then the insurer, through their policy, has the right to deal with that claim in any way, shape or form, without contacting the builder. However, now that less claims will be put on insurers, builders will now have to deal, through an alternative dispute mechanism, with the tribunal to resolve these disputes, and it is suggested that this potentially could place further demand on the Building Conciliation Service and the CTTT.

CHAIR: You are not referring to an exacerbation of existing delays at this point, are you?

Mr MEREDITH: Certainly not. I am just suggesting that there is potential. At this stage it is certainly not a significant concern that we have. However, looking at the terms of reference and the impact, we are looking at potential impact and the fact that the CTTT more or less has total jurisdiction of building matters, there is the potential that more matters will go to the CTTT and more demands will be placed on the Building Conciliation Service [BSC]. If the CTTT and BCS can respond it does not become an issue but if they cannot respond to the demand and we start to get backlogs again, it becomes a problem.

CHAIR: The submission expresses concern that there is no indication that insurers will reduce their premiums or relax their underwriting conditions as a consequence of the reforms contained in the recent legislation. It is also said there is no guarantee that the existing insurers will not withdraw. That is a reference to some remarks made on page 4 of the submission. Are the concerns I have just referred to being voiced by your members and what views do you have about the likelihood of premiums being reduced, of more insurers coming into the market or existing insurers staying in the market?

Mr MEREDITH: The underwriting conditions, established by the insurers, have been a major issue since mid-1999 and today that has not changed. Again I refer back to the meeting I had with builders on Saturday. The same issues were being raised and discussed even though this legislation has taken effect. There has been no indication whatsoever that premiums will decrease because of the now limited exposure to insurers but that was reinforced to us by the insurers themselves, and I refer back to the meeting we had with the Opposition leader where Royal and Sun Alliance indicated quite clearly they had no interest or were giving no consideration to revising their premiums until December 2002. However, what we are hearing—and I cannot substantiate this—is that builders are saying to us that they have been relegated in their categories to a lower category, which then allows insurers an avenue to increase premiums by the backdoor.

We have seen no softening of the underwriting criteria and documents that I have provided to the Committee and letters from insurance providers clearly indicate that. Deeds of indemnity are still being requested. In some cases we believe that where deeds of indemnities are not being demanded there is an increased focus on ensuring adequate equity is maintained in the business. We are seeing as a common occurrence that insurers are now asking builders to purchase shares in their company, register those shares with ASIC, have their accountant prepare a financial statement as proof of those shares being registered and pass those on to the insurer. That falls in line with the statement made in the press by an executive of Royal and Sun Alliance, who said, "We would not be making demands of deeds of indemnity, however, taking a more rigorous financial focus on the business itself."

However, in the case of Dexta and others, and certainly in the case of Royal and Sun Alliance in respect of high-rise developments, deeds of indemnity are still being requested and unconditional bank guarantees are still being requested. Whether there could be further withdrawals from the scheme, it is of great concern to builders, especially in the case of Dexta, where the government support to Dexta was going to run up until 30 June builders could only get eligibility approved up until 30 June yet they were still asked to put up securities in the form of unconditional bank guarantees yet they did not know what was going to happen after 30 June or, indeed, whether Dexta would exit the industry and take their bank guarantees with them. It was only in the last weeks of June that it was announced that the cover would be extended to December.

Again, while builders welcome the additional support of the Government in extending the support to Dexta to 31 December and while it gives them some comfort, it does not give them any real comfort to know what will happen after 31 December and what will happen to their unconditional guarantees and security that have been provided. The same applies to the other insurance providers where the securities have been requested and provided. They know quite well and they have seen from

what has happened in the scheme that insurers and insurance underwriters can withdraw from the scheme basically at any time and without any real notice.

CHAIR: Late in the submission the comment is made that the level of service delivery by insurers is a significant problem for builders. In fact, the submission describes the experience since the collapse of HIH as appalling. You do, though, recognise that the remaining insurers did have problems in absorbing the client base left following the collapse of HIH. Have the builders experienced at this stage any improvements since the reforms were announced, particularly since they came into effect?

Mr MEREDITH: There has certainly been no evidence of that from the conversations I have had over the last few weeks with builders. I know of one builder who last week flew to Melbourne to meet directly with representatives of insurance companies in an effort to progress his application. He felt he was getting nowhere over the phone and through other methods of communications and as a last resort he flew to Melbourne. That shows the extremes to which builders are going and what they are trying to deal with in progressing their applications. We are still getting common complaints that phone calls are not being returned, that they cannot speak to anyone to negotiate extensions to their eligibility. Another builder was trying to negotiate an extension of eligibility, which had been ongoing for some time, certainly since the legislation had been introduced and passed. It was only after several weeks of negotiation that he was subsequently told that his eligibility had lapsed and that he would now have to submit a fresh application for eligibility, and yet he had been negotiating with representatives of the insurers for weeks over extending his cover. It was only after several weeks that they came back and said that his eligibility had lapsed and he had to submit a fresh application and that basically all the negotiations were off.

This type of customer service is still continuing today, irrespective of the legislation, and continued promises that communications are going to improve and that processing times have reduced. I say to the Committee that we have been hearing this rhetoric since the collapse of HIH of promises of the delivery of new products and that applications would be processed in very short time frames yet they have not being delivered. We continue to hear the rhetoric again from insurers that they will get it right and will deliver the service. They have had the benefit of reduced insurance cover and the change of legislation, which was essentially put together for their benefit, but from the builders' point of view, a reasonable level of customer service is not being delivered to them.

The Hon. JOHN RYAN: The chairman discussed with you your announcement last week or the week before that there was some discussion about setting up another inquiry through the Master Builders Association. Do you understand that that announcement may be used by some to suggest that it undermines your concern that there would be other players prepared to enter the market, given that the Master Builders Association appears to be making a bid to enter the market itself? Would you care to comment on that? You have said in your submission that there were promised new entrants but none have been seen, yet one of the potential new entrants is your organisation. It could be used to suggest that the market is sufficiently viable that you are prepared to enter the field yourself.

Mr MEREDITH: I am certainly concerned about that press statement and what you have raised. What initiated that press statement was the fact that it became known to the press, through a press release, that the MBA had received a grant to investigate developing an industry fund, and consequently that press release was made. Yes, I can understand the situation it creates but for quite some time we have been looking at an industry fund as an alternative because we could not see the privatised scheme as it stands now being sustainable in the long term. The only way you can effectively provide home warranty consumer protection in a workable arrangement is through a non-profit arrangement or a government scheme or maybe a combination of both. The evidence for that is what we see in Queensland with a government scheme, and although there can be some criticisms, even the builders themselves in Queensland strongly support the scheme, and it is really the only scheme that is working. While we have been critical, though, we have looked to try to go on the front foot and create an alternative, and that is what we are continuing to do. But we are facing difficulties, I guess, in that the current changes have not attracted new backers or supporters of our scheme.

The Hon. JOHN RYAN: Essentially it is an investigation and there is no suggestion at the moment that you are about to announce a scheme? You have not had a long queue of insurers prepared to line up and assist you, notwithstanding the press report seems to indicate that there was some interest from NRMA Insurance?

Mr MEREDITH: I cannot comment in regards to the NRMA because the negotiation on this scheme is being done through the executive director and consultants, and I have not been privy to the details of those negotiations. But I know that for the industry to get up a scheme we must have backing—we cannot do it on our own—either government backing or private backing. Of course, we have faced great difficulties but we believe we have got a very good framework for a scheme to successfully operate, and what is going to be critical to that scheme getting up and running is being able to get sufficient support to put the scheme into operation. Effectively what we would be looking at creating is an insurance division of a Building Services Authority in Queensland trying to run the operation.

The Hon. JOHN RYAN: Your submission to this committee appears to differ significantly from the approach taken by the Housing Industry Association of Australia whose submission largely supports the new scheme. They seem quite enthusiastic about it, but you seem more pessimistic and you look more towards a scheme like that which operates in Queensland, and they have not been quite so ebullient about that possibility. In fact, they believe that it is better to have the scheme sponsored by private insurers. Would you care to suggest why there might be some difference between yourselves and the housing industry given that both of you appear to be speaking to the same groups of people, that is, builders?

Mr MEREDITH: I find it difficult to comment. I know that for a long time now our approach and the approach of the Housing Industry Association on this issue has been quite different. I think the evidence is clear that builders out there are hurting. We are simply representing the thoughts and the message that is delivered by those builders. They have been hurting for sometime and were hurting prior to the collapse of HIH Insurance. It is interesting that there is a persistence to continue with a privatised scheme—a scheme that essentially has failed and has not delivered the intended outcomes as promised that I previously outlined when the scheme was introduced; a privatised scheme that has probably seen more withdrawals than it has of new entrants into the scheme; a scheme where premiums have continued to rise; a scheme that has delivered difficulties not only to builders but consumers; and a scheme that now has actually probably reduced the level of consumer protection to less than what was offered to the Building Services Corporation. In speaking to Queensland builders who still operate under the only government scheme and actually sing the praises of that scheme, it is interesting that there is still strong support that privatisation of this scheme is working, needs to continue and needs to be done on a national basis.

The Hon. JOHN RYAN: Obviously our committee will have to make an assessment as to which group better represents builders. I am not suggesting for a moment that you want to denigrate HIA, but can you suggest why we should take you as being a better representative of the view of builders than HIA may claim to be?

CHAIR: Before you respond to that question, I suggest that possibly in regards that question, you represent members of the Master Builders Association and the HIA represents its members. Could it be put as simply as that?

Mr MEREDITH: It could be, but as far as MBA representing our members, indeed on this issue we have gone beyond our membership and we are trying to represent the interests of both HIA and MBA members and certainly non-members of the building industry as a whole. We are trying to reflect and communicate simply what is being put to us by the majority of builders in the industry and the difficulties they are facing over this issue. It is not a matter of difference of policy between the MBA and HIA: it is simply that the MBA is reflecting what the industry is telling it.

The Hon. JOHN RYAN: How extensively have you conducted your consultation with the industry?

Mr MEREDITH: Quite extensively. We have surveyed the industry. We have participated in many forums and meetings not only of just our members. I reflect on my presentation last Saturday to a national conference of franchised builders, a very small percentage of whom were MBA members. So certainly our surveys went beyond our membership. I believe on the home warranty issue changes to legislation and amendments, we have consulted quite extensively and well beyond our membership.

The Hon. JOHN RYAN: You have already mentioned that this particular Act conflicts with another section of the home building Act with regard to statutory warranties. A matter that was raised on the other committee of which I was a member, dealt with the specific clauses of this Act. This Act, unlike that in Queensland, defines the meaning of a structural defect and provides no definition of a non-structural defect which is largely left to silence. Do you think there is a need to define what is a non-structural defect as well as a structural defect?

Mr MEREDITH: Possibly, but even if you did there will be a certain degree of ambiguity. We have seen that in the past under the old BSE scheme when there was always debate over what was and what was not covered by a structural defect. How far do you go? It certainly could be helpful. A lot depends, of course, on what the definition of a non-structural defect entails. Irrespective of what you do in trying to provide a definition there will always be some ambiguity and you will always have that debate, but I do not think that is sufficient reason for not attempting to provide a definition.

The Hon. JOHN RYAN: You have raised the Queensland scheme a couple of times, and some of its virtues. It is a fact, though, that the Queensland scheme is in some ways similar to what insurers are attempting to achieve with regard to checking the capitalisation of builders and their equity in their business. They too require a certain level of information about the financial stability of each individual builder. In what respect is the Queensland situation different from what insurers are requiring in New South Wales?

Mr MEREDITH: It is substantially different. In Queensland the financial qualification is all up at the front end and linked to licensing so it gives some credibility to licences. Once you are licensed there you are then eligible to get insurance. Yes, they have a financial qualification. Of course, the big difference of what occurs in Queensland and in New South Wales is that it is clearly defined: the builders know exactly what they are required to do and the parameters of that financial qualification. They know what they have to do to move from one level to the next, so a new entrant who comes into the scheme knows exactly what they have to do to grow their business and move to the next level. I think that is the most important point. A common complaint that comes from New South Wales builders is that they do not know quite clearly what they have to provide to the private insurers, and indeed what their competitors have to provide.

I suggest to the committee that an average builder in country New South Wales who is being asked to put up 20 per cent of asset to turnover ratio is telling us that they do not believe that probably any of the top five project home builders in New South Wales or Australia are also being asked to put up 20 per cent of asset to turnover ratio. They say there are rules for some and rules for others. In the Queensland scheme it does not matter whether you are one of the big boys or one of the small guys, you know exactly what you have to do to meet that financial criteria. The other point is that the financial criteria was established in negotiation and consultation with the industry. What we have in New South Wales in regards to this financial criteria, even though it is not made transparent, it is being forced onto the industry with no consultation whatsoever. Financial business arrangements have been structured over a long time, not dissimilar to many other businesses that are operating out there, and are essentially being turned on their head overnight without notice simply to meet the financial arrangements that are required by insurers.

The Hon. JOHN RYAN: An argument put to the committee from time to time and to the Government is that in New South Wales we are seeing some of the instability you would expect, given that there is meant to be changes and that over a period of time the instability will become less a feature of the industry, everything will be right and we will soon have a New South Wales building industry that is as stable as it is in Queensland. Is that a possibility?

Mr MEREDITH: No, I often hear it said that what the industry is going through is necessary and is a cultural change and there is an expectation that through this cultural change there will be casualties. There has certainly already been some casualties and there will probably be more casualties but anyone who expects that a builder who has established a business over a long period of time and is not only supporting his family but contractors and others, and is employing people, is prepared to walk away quietly from their business, or have their business destroyed, simply by a system that is being forced upon them, is kidding themselves. We are seeing that builders are protesting–we saw that recently when builders themselves protested outside Parliament House, it is

probably only the second time that this sector has protested. Even though they could prejudice their position, they are making public statements through the media and talk-back radio. Unfortunately, we are also seeing a growth in illegal activity simply because it is not the fact that builders do not want to comply with the law, it is the fact that they are not prepared to let their businesses be destroyed and let their years of work disappear.

The Hon. JOHN RYAN: One of the reasons it has been suggested to the committee that the Queensland scheme has been more stable in terms of its premiums and capitalisation requirements of builders was that they were fortunate enough to have made a fairly long-term agreement with their insurance underwriters prior to September 11. Have you heard of that?

Mr MEREDITH: Yes, I believe it is the case that previously they contractually secured their reinsurance on an annual basis and that has now been extended to three years. I believe the question was asked, "Under this current climate, and the turmoil within the industry, how is it that the Queensland reinsurance contract has been extended to three years when in New South Wales we hear that reinsurers are pulling out of the scheme?" I understand the response was that their reinsurers liked what was being done, and that it was all being done at the front end, and actually liked the scheme.

But I think again you have got to come back to the introduction of the privatised scheme here in New South Wales and the fact is that there were no contractual arrangements made either with the underwriters operating in the scheme, let alone reinsurers. I come back to the point that an underwriter or an insurer can pull out of this scheme at any time they like. I have raised this before and I have been criticised for it; I have said that look, even if the Government did enter into contracts with HIH it would not make any difference. I have also been told that the Government cannot enter into those sorts of arrangements with insurers in providing this product and that is a load of rubbish because governments enter contracts with commercial businesses every day of the week. I think it would have offered some sort of security that yes, insurers know that they are in this business for a certain period of time. Now it has been done in Queensland with the reinsurers and I just think it is unfortunate that it was not done in New South Wales.

CHAIR: In regard to insurers though, would it not be true to say that in any insurance markets it could justly be said that an insurer could withdraw from that market according to its own choosing at any time?

Mr MEREDITH: That can be the case but I think there has got to be something established. There has got to be some certain arrangement—especially when you are looking at statutory schemes like this—as to what one party is going to do for the other. There have got to be some sort of terms established. But what we see here with this scheme, there are conditions of ministerial approval but they are just simply reporting requirements and that is as far as it goes, there is nothing else.

The Hon. JOHN RYAN: Just moving on to the CTTT and building disputes services, you have reported in your submission reasonably favourably a new scheme, and obviously it is important in a scheme of last resort to have a quick resolution of building disputes. Is your report today based on specific consultation with your industry? The reason I ask you that is the other building inquiry was beginning to find that although there is some success with the new building disputes scheme it is not as extensive as might have been originally hoped. Only about 20 percent of the people who go to the tribunal agree to go through the early dispute resolution service; the rest go on to the tribunal in the traditional fashion and whilst there is some truth that they are overcoming the backlog of the former Fair Trading Tribunal they are of course in time developing a backlog of their own. So are you able to tell the Committee recent experience of what builders are reporting about what they believe is the effectiveness of the tribunal?

Mr MEREDITH: I guess we are looking at the builders conciliation service and regarding the success of that service, in talking to independent experts and some builders who have actually taken on the process and been through the process, they have effectively conceded that the process is working, and that is encouraging. I thought that the number of matters going to the builders conciliation service was actually a lot higher than the figures that you presented. The Master Builders Association of New South Wales [MBA] has been a strong advocate of this early intervention process. We presented sort of a model that came from the adjudication process under security of payment legislation and in our submission we believe it should have been compulsory that while it can be said

you cannot force people to mediate, we felt that the benefits that can be delivered through this process warranted saying okay, you have got no choice, you must go through this process; possibly in some way saying even if you do refuse to go through this process and do go through the tribunal, chances are you are going to come back around and have to go through the process at some stage anyway.

The Hon. JOHN RYAN: As I understand it the difficulty is exactly that, that both before they go through the building disputes service and the early adjudication service procedure anyway both parties have to agree and they are finding that only 20 percent of the parties agree to do that. So 80 percent are doing exactly the same as used to happen previously. I do not know whether you have observed this or not but one of the two former members of the tribunal who, I have to say to you, were not reappointed, said that—as they had apparently expected—because the tribunal is now the preferred jurisdiction for building matters, there was a very large increase in the number of matters which would go to the tribunal that previously, for example, went to the local courts. There were matters in the local court where the builder was simply seeking to retrieve a debt and now even those matters can wind up in front of the tribunal. There might in fact be some builders who are a bit disappointed with the fact that previously where they could go to the local Court and have a debt order made, they will now have to go through some sort of process which could involve a lengthy hearing in the tribunal. Are you aware of any specific change from builders with regard to that?

Mr MEREDITH: I have not heard specifically in regards to pursuing debts and this type of thing. Certainly our legal department may have knowledge of that but that has not been discussed with me. We raised concerns at the time when the draft legislation was put forward to give the tribunal effectively total jurisdiction of these matters because we had actually seen, and it had been recognised, that there have been improvements in the court systems to deal with building matters and we could see the problems where there were already backlogs under the old Fair Trading Tribunal and that this provision could only compound those backlogs.

The Hon. JOHN RYAN: You have said that there might be people within your organisation who deal with legal matters who might be able to give the Committee more direct advice about these matters. Could you undertake to perhaps see whether they wish to do that and provide a supplementary submission to the Committee in that regard?

Mr MEREDITH: Certainly.

The Hon. JOHN RYAN: Finally, I wanted you to put yourself in the position of a consumer under the new arrangements. One of the large impacts on consumers is obviously the 20 percent limitation in matters where a building construction is not complete and because this is now a last resort matter, there is no capacity to go to the insurer unless the builder is dead, insolvent or has disappeared, therefore it necessarily involves some legal expenses which are now covered in this scheme. Do you think that if a structural matter is detected in, say, year 5 of a building and that is a problem that requires some litigation, that $200,000 is going to be sufficient cover for a structural defect in the home in five or six years time which may need to be repaired, plus the legal costs involved in getting there? What suggestions would you make as to what we might do about what I might call the catastrophic situations where—I do not suggest this is representative of all builders—there are some builders who leave consumers with some pretty serious outcomes? Do you think there is any capacity to either supplement or improve this scheme to deal with catastrophic situations where people can start with a renovation and potentially lose their entire house, involving a great deal more than the $200,000 insurance?

Mr MEREDITH: It is difficult to answer. It is how far we go with this but I think this comes back to another important issue that when we are looking at the cost of claims and the value of claims, we recognise that consumers need to have protection—and I believe there are isolated cases, when you look in comparison to the overall number of dwellings that are constructed, where you do have these catastrophic situations—and whether there is not some sort of separate fund established to take account of these catastrophic situations. But I think it also leads into another issue that is of major concern that when the work has been identified and the valuation done of this work to be undertaken, from the advice and reports of consultants who are carrying out investigations of this work we have heard of recommendations for work to be completely demolished when that is certainly not necessarily the case. Therefore you are seeing claims that have been heavily inflated because essentially there is a hired gun mentality out there in the structure of these reports.

As a consumer, putting the consumer's hat on, I would be concerned with this legislation, if I am aware of it, of the reduction in the level of consumer protection and the difficulties that can come out of it. However, in saying that—and we have made the statement before—in some aspects the pendulum of consumer protection had swung too far and it needed to come back to some reasonable sort of ground but I can only make the point that it is in the interests of the industry. The ideal situation is for the industry to be able to have confidence in dealing with consumers and consumers having confidence in dealing with the industry. Unfortunately, under the current arrangements, we do not have that. Builders do not have the confidence in dealing with consumers because yes, there are rogue consumers out there the same as there are rogue builders and builders not being paid and builders are simply being ripped off, the same as we have builders out there who are doing terrible work and need to be routed from this industry.

CHAIR: Thank you very much indeed, Mr Meredith. Is there anything you wish to add before we conclude your evidence?

Mr MEREDITH: No, thank you, Mr Chairman.

CHAIR: We are very grateful for your evidence and for your submission. Thank you very much.

[The witness withdrew]

ELIZABETH ANNE CROUCH, Executive Director, New South Wales, Housing Industry Association, 89 Blaxland Road, Top Ryde,

SHANE DARREN McCARTIN, General Manager, Business Services, Housing Industry Association, 79 Constitution Avenue, Campbell, Australian Capital Territory, and

MICHAEL PETER PYERS, Manager, Services and Operations, Housing Industry Association, 79 Constitution Avenue, Campbell, Australian Capital Territory, sworn and examined:

CHAIR: Did you each receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act and are you conversant with the terms of reference of this inquiry?

Mrs CROUCH: Yes.

Mr McCARTIN: Yes.

Mr PYERS: Yes.

CHAIR: Could you each briefly outline your qualifications and experience as they are relevant to the terms of reference of this inquiry?

Mrs CROUCH: As the Executive Director of the New South Wales Housing Industry Association, I have been heavily involved with the Home Building Act and home warranty reforms. I have worked closely with the New South Wales Government to develop the new system. I have certainly been very closely involved with our more than 8,000 members in New South Wales, who range from multi-unit builders to detached house builders. Their input has been important in terms of HIA working with government on these reforms.

Mr McCARTIN: I have been a practising builder and I am a qualified building surveyor and building inspector. I have represented the housing industry, both as an individual and as an association employee, on various State and Federal government advisory committees, Australian standards committees and the Australian Building Codes Board.

Mr PYERS: Prior to moving to work with the HIA's national office in Canberra, I spent three and a half years working with Ms Crouch in the New South Wales office of the HIA on submissions regarding various reforms to the Home Building Act, including the submission that is currently before the Committee. I continue to work with Mr McCartin on a national basis on warranty insurance issues.

CHAIR: The Housing Industry Association has made a written submission, for which the Committee is extremely grateful. Is it your wish that that submission be included as part of your sworn evidence?

Mrs CROUCH: Yes.

Mr McCARTIN: Yes.

Mr PYERS: Yes.

CHAIR: If any of you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, I must point out that the House has the right to override our decision in that regard if it so chooses. Do you wish to make a preliminary oral statement before we turn to questions?

Mrs CROUCH: Yes, I will ask Mr Pyers to make some opening remarks.

Mr PYERS: Thank you. As you are aware from our submission, HIA has supported the passage of this bill and the reforms that are the subject of this inquiry. We support them fundamentally because in our view they ensure the maintenance of private sector, Australian Prudential Regulation Authority-complying home warranty insurance. The certainty that APRA regulation provides—with greater regulatory requirements, greater capital injection requirements and start-up capital requirements—ensures certainty at the end of the day for consumers, builders and insurers who either operate the home warranty system in New South Wales or operate within that home warranty insurance system.

I will give a brief history of HIA's involvement in home warranty insurance. The HIA has been involved in home warranty insurance since the 1970s, prior to government taking over the running of warranty protection insurance for builders in the 1980s. This began when two companies linked to HIA and the Master Builders Association in Victoria ran the scheme and the government-owned Housing Guarantee Fund Ltd subsequently took over the running of privately underwritten schemes in 1983. As you know, enterprises that were run by government came under scrutiny in the 1990s and these issues as far as they related to home warranty insurance were examined by Commissioner Dodd, who in his 1993 report recommended that the warranty scheme administered by the then BSC be replaced by a private sector scheme. Commissioner Dodd also reported that there was a conflict of interest between the BSC's insurance and licensing responsibilities as they stood at the time, with the corporation able to use the threat of cancellation of a building licence as a device for resolving potential insurance claims.

The Trade Practices Commission in its 1993 report, entitled "Home Building Consumer Problems and Solutions", also recommended the opening up of the private warranty insurance market to full private sector competition. The Trade Practices Commission also argued for a more uniform home warranty framework between the States and Territories, this issue has also been the subject of a Federal inquiry headed by Mr Allen. The Victorian statutory warranty scheme administered by the Housing Guarantee Fund Ltd was privatised in 1996, followed in 1997 by the New South Wales scheme. In 1998 the West Australian Housing Indemnity Scheme became mandated. As the Committee will be aware, Queensland is the only State that currently runs a public sector scheme.

When the warranty schemes in Victoria and New South Wales were privatised, the government of the day increased significantly the level of statutory warranties, possibly to assuage consumer concern about the impact of privatisation. The largest underwriter in home warranty, Royal and Sun Alliance—which has been involved with the schemes from the early 1990s—adopted a grandfathering of builders into its program on privatisation. With thousands of builders about to be transferred into private warranty arrangements, there was no time at that stage to undertake relevant financial assessments and other such things. The almost complete absence of underwriting history made it difficult for underwriters to price appropriately the new warranty schemes when they first came in. With the benefit of hindsight, it became apparent that the original scheme premium structure in Victoria and New South Wales was too low. More appropriate risk assessment procedures relied on the accumulation of builder profiles and claims histories, which emerged after several years experience with underwriting arrangements.

We then had interwoven on this the effects of the collapse of HIH. What we saw with the collapse of HIH was that the reform process that the industry should have gone through over a number of years was compressed into a relatively short time frame. The industry has been coming to grips with those issues. In our view there has always been a dichotomy between the requirements of insurers in relation to capital injection and other such matters and the advice that people traditionally receive from their accountants as to how one should structure one's business so that one can legally pay the minimum amount of tax, and that is a dichotomy which is still in the process of being resolved.

We support the bill. We believe it provides certainty through APRA requirements. With the recent amendments to the Commonwealth Insurance Act 1973, the Commonwealth has reinforced APRA requirements by placing limitations on State and Territory governments or parliaments as far as exempting certain types of insurance from APRA requirements is concerned. In our view APRA requirements have become stronger, and they are fundamentally important to consumer protection.

In recent months in Australia we have seen the collapse of the United Medical Protection's medical protection fund. That was a mutual fund which did not comply with the terms of APRA. In 1999 in Canada there was a new home warranty fund which operated in British Columbia and nearby territories or provinces in Canada which collapsed, and the litigation from the billions of dollars that that fund owes is still going on in Canada today.

To conclude this opening statement, we believe that New South Wales is ahead of the game, through the passage of this legislation, in so far as it has ensured the maintenance of APRA-complying private sector warranty insurance, with the opportunity for further competition, which my colleagues will elaborate on, and a better-run insurance scheme as a result of this.

Mr McCARTIN: In relation to the issue of income, HIA has a financial interest in that we do draw an income through an association with our national insurance brokers, Aon, and their underwriters, Royal and Sun Alliance. This is not unusual for industry associations. It is common practice for most industry associations, including the Master Builders Association of Victoria, the Master Builders Association of the Australian Capital Territory and many other professional bodies.

We do this to offset the free-of-charge services that we provide to our members. We provide legal advice, technical services, industrial relations services, occupational health and safety services and town planning services free of charge. We have to offset our costs in that area through income-derived services, which include publications, events and conventions, but it also includes affiliate associations with people like Toyota Australia for the provision of motor vehicles, IOR for the provision of health insurance, and also Aon for the provision of general insurance services.

We feel it is only right that we state at the outset of these proceedings that we do draw an income from insurance, which is not unusual for an industry association. However, as a not-for-profit organisation it is all put back into the services that we provide free of charge to our members.

The Hon. JOHN RYAN: The Committee has noticed that the submission that has been provided by the HIA is virtually letter-perfect the same as that submitted by HIA Insurance. Is there a reason why the two submissions are the same? To what extent can you legitimately be said to have a submission which clearly represents builders who participate in the building industry, in that either your organisation wrote the insurers submission or the insurers wrote your submission?

Mrs CROUCH: There are a number of things about that relationship that are important to understand. The first is that we licence our name to Aon to use the brand HIA Insurance Services. We also provide information technology and other builder assessment software to assist the insurer in making a decision about builders and their performance. The other important issue is that we provide them with direct policy advice. So your comment about the nature of the submission would have been that we would have advised them about a number of issues and they may have taken up much of those recommendations in their own submission. That is part of the relationship we have structured with them.

Mr McCARTIN: We also provide copies of our submissions to them. Part of the strength of the relationship has been the openness and honesty of the relationship. We provide them with a copy of all our submissions and briefings on all our Government liaisons and discussions, and they would have had a copy of our submission to this Committee, as they had a copy of our submission to Percy Allan's review and other submissions on the topic. We would not place copyright on it. If they choose to use it in part or in whole because they believe that it adequately presents their considerations as well, we would not restrict them from doing that.

CHAIR: As you are aware, the previous witness this morning was Mr Meredith, speaking for the Master Builders Association. What came through to me very clearly when I read the Master Builders Association's submission and your submission is that a substantially different approach is taken. The MBA's submission is very much more critical of the recent legislation. I think it is fair to say that the HIA submission is supportive and positive so far as the amending legislation is concerned. For example, at the top of page 4 of your submission it is said, "HIA submits that the amendment bill fundamentally alters the home warranty insurance scheme for the better." Could you indicate to the Committee why your organisation is supportive of the legislation, in contrast to the different approach taken by the MBA?

Mrs CROUCH: Certainly as a national organisation HIA has the benefit of being able to get experience with a range of different warranties schemes across the country. Many of those have positives and negatives, if you like, and part of our negotiation with the New South Wales Government on the reform package picked up the best of schemes operating in other States and brought them together in a discrete package to take the industry forward in New South Wales.

As Michael suggested, we have had some long-term involvement with warranty insurance having been involved in it very early, in the 1970s, so we have learnt a great deal over that period of time. Our connections directly with our builders have helped us refine what should be a workable system. At a time when we had some unknowns or unexpecteds, like the collapse of HIH, certainly that changes the parameters you are operating within.

Clearly, what are we needed to do with this reform package was to have greater certainty for builders and consumers, and moving to a last resort scheme and a two-year and six-year structural period created that certainty that was not there previously. With a flat seven-year warranty period previously, we had builders who were experiencing some very difficult situations where a consumer may have had a cracked tile that was purely a maintenance issue and that potentially became a claim on the insurance system. As a result, we saw escalating costs within that insurance regime and everyone was paying for that, both builders and consumers. A number of issues prompted that. Certainly the collapse of HIH brought everything together far more quickly, and we had to work fairly quickly to consult with our members and make sure that the package that was put forward to the New South Wales Government covered all the bases.

Mr McCARTIN: Our objectives at the commencement of the reforms were very clear and concise. We had no intention of keeping something that may have been broken, by simply putting a few bandaids on it. We had no intention of seeking reforms that would merely keep the current insurers in business. What we were looking for was something that was sustainable—and for an insurer, sustainable means profitable. If it was sustainable, it meant that not only would the current insurers hopefully be retained, but also it would encourage other insurers into the market. We see the greatest opportunities for privatised warranty existing in competition. We are not supportive of government monopolies, but we are not supportive of private monopolies either. So we were looking to create a basis under which a sustainable and competitive warranty market could be established once again in Australia.

The reason we are so supportive of the reforms is that we believe that they certainly deliver on that objective. We have been successful to date in retaining Royal and Sun Alliance and Reward in the Australian warranty market. Dexta has been there with the support of the Victorian and New South Wales governments. We were advised by the Victorian Government representatives as late as Friday that it appears that they may have achieved some longer-term support, which we are very excited about because we want them here. We also understand that there is at least one, if not two, household names looking at ensuring the market. The NRMA has been quite open in advising us that they are hopeful to be in the market as early as 1 September. We think that date is optimistic, but it certainly shows a clear indication of how they have received the reforms, in creating a market that they see as now worth entering for the long-term.

CHAIR: Mrs Crouch, in response to my question, referred to your organisation as being the national one. Are you able to indicate whether there are any aspects of schemes in other States that you feel should be incorporated in this State, or whether there are any aspects here in New South Wales that do or perhaps do not work potentially well?

Mrs CROUCH: I might ask Shane McCartin to answer this question because he is in a national role. However, I will make a general comment, and that is that there are a number of operational issues beyond the reforms that are now being worked on with the New South Wales Government, particularly with the Department of Fair Trading, to look at guides and tools to assist the administration in implementing the reforms which I think will help directly in moving forward. With regard to the other schemes, I might ask Shane to respond.

Mr McCARTIN: One of the reasons we are so confident that the reforms will be successful is that no-one was too clever in what we established, and we did not have to be. All we had to do was

to look at South Australia and Western Australia, who have operated fundamentally under the same basis of what has now been introduced in Victoria and New South Wales for many years.

We do not see in those States that builders are any more disadvantaged; we do not see in those States that consumers are disadvantaged. We do not see in those States that the standard of construction is any lower; in fact, it is recognised as being slightly higher. The insurers have clearly illustrated to us on many occasions that they had sustainable programs in those States.

Part of the future success of the reforms as we see it is that they have not reinvented any wheels. They have taken successfully operating schemes out of South Australia and Western Australia through pre-cemented harmony and discussion between the two major markets of Victoria and New South Wales; they have been able to mould those into applications of those major eastern States, to the point where we have confidence that we will get the same successes and sustainability in Victoria and New South Wales as exists in South Australia and Western Australia.

As Elizabeth touched on, there are couple of procedural areas where we think things have drifted and possibly still need to be tightened up a little. In the joint standing committee's findings on building control there is a proposal to harmonise again with the establishment of a home building commission, which we think is a good initiative that seems to mirror what exists in Victoria with the building commission there.

We would be concerned if it was purely a Home Building Commission. It needs to be the full gamut of industry so that it can consolidate the application of licensing, auditing, investigations and prosecutions across all participants rather than just a sector of the industry. We were never too keen for the conciliation processes to be voluntary because when they are voluntary there is a means for those who do not want to participate in the conciliation process to step around it. We believe that they should always have been mandatory as we believe that is an excellent filter for dealing with the frivolous or possibly the recalcitrant as a first step.

The other issue is the financial assessments. We believe that the Victorian and the New South Wales governments in particular have subrogated their responsibilities for the financial assessment of builders. It was something that was previously carried out by the Housing Guarantee Fund in Victoria when there was a State-run system. There were financial assessments, there were criteria and there were requests for bank guarantees similar to the financial assessment criteria undertaken by private insurers now. But in the transferring of it across to a private sector warranty market those government obligations were dropped into the laps of insurers.

Insurers will always undertake their prudential checks because they are establishing a risk. But we do not believe that that allows the Government to fully step aside from that responsibility. There must be minimum benchmarks and thresholds for all aspects of licensing. We believe that financial assessment is one of those assessments that the Government should undertake.

The Hon. JOHN RYAN: What would be the point? In order to get a building licence in New South Wales you need to establish a capacity to get insurance. Insurers, by any measure, are pretty rigorous in their assessment of a builder's financial viability. What would be the point of the Government doing that?

Mrs CROUCH: I believe that the Allen review—which we have not yet seen—is dealing with that issue. I think that it picks up on some of the comments that you raised earlier with Mr Meredith about the Queensland system, where there is a crude financial test for people in relation to licensing. It actually means that some people who are stripped out of the system early in the piece may not require insurance or warranty insurance for the type of work they do. But from the consumer protection point of view you still want to know whether or not they will fall over, if you like, in relation to any work that they might do. As I said earlier, while nobody has seen the Allen report yet, we understand that a feature of it may be some crude financial test that picks up on some positives out of the Queensland scheme.

The Hon. JOHN RYAN: If the Government took over the business of only licensing builders who were seen to be financially viable, given that it is a statutory scheme in which everybody has to participate, is there any reason why the insurance industry has to carry out what builders have

found to be the most difficult aspect of the scheme—the phenomenal level of negotiating and the difficulty that they have had in obtaining insurance?

Mrs CROUCH: The issue that you need to keep in mind is the nature of the work that the builders are actually doing. In some cases builders have faced those tests when they are doing either multi-units or perhaps a custom-built home and they have never previously had that experience. If they have never had to do an architecturally designed job, for example, the insurer may want to be satisfied in that case that they are qualified and experienced to do so. There have been a number of examples where builders have costed against a job. Consumers, by right, will try to choose the lowest cost for a particular building job. That is just human nature. In some cases, in choosing the lowest quote a builder might have grossly underestimated a custom-built job, for example, got it to lock-up stage, promptly gone broke and the consumer is left high and dry. There are a broader range of issues that the insurer looks at rather than just the crude financial test.

The Hon. JOHN RYAN: That is not what is going on now. People are wanting to do standard building projects. Your submission and your answers to questions so far do not seem to suggest—they bypass or almost ignore the fact—that a riot almost occurred outside Parliament House not so long ago when a group of builders protested about what insurers were doing to them. Are you prepared to state, as a representative of builders, that there are no problems that need to be addressed so far as builders are concerned with obtaining home warranty insurance?

Mrs CROUCH: Forgive me for giving you the perception that there are no problems. Clearly, there are problems. Let us look at the issues on their merits. In relation to the issue of the riot outside Parliament House, you have to look at who was involved. Many commercial construction builders were involved in that. That was evident from the number of hard hats that were present at that rally. A number of subgroups or splinter groups that have been established are looking at the warranty insurance issue. They have been trying to progress the issue for supposedly non-aligned builders or aligned builders. I am aware that a number of insurers have approached those groups to try to deal with many of the outstanding issues that those people have experienced, but to no avail. They have not been able to contact the people that they supposedly represent.

I do not want to leave you with the illusion that there are no problems. Clearly, there are problems. Those problems are driven by communication, as you rightly said earlier. They are driven by a lack of understanding about what the new regime looks like. It is about education, if you like. We have had such a short period in relative terms to try to educate builders about it. Clearly, builders who understood where the reforms were going and who understood how their companies should be structured have had minimal trouble. There is no question about that. You just have to look at the performance of the industry over time to see that it has not stalled. We are at 12-month highs in relation to building activity and so on. Clearly, somebody is working out there.

Michael referred earlier to the fact that a number of builders have been advised by their accountants to structure their companies in a particular way. Clearly, they are the people who are having the most difficulty. They are the people with whom we have been spending most of our time. I take many of their calls. The job has been about trying to get them contact with insurers, to sit them down with some people and try to progress some things. We instigated with Fair Trading the builder clinics that did the rounds of country and metropolitan New South Wales some months ago. That was our initiative. It was all designed to have builders, their accountants and insurers sit together to try to work out a solution.

The only other comment I make is that the new reforms have only been in place for a very short period of time. We have a further education process that we need to do on those. That is happening now. I do not want to leave you with the illusion or the view that we do not believe there are any problems. We know that there are problems. We are just actively trying to fix them.

Mr McCARTIN: There have also been comments by builders in regard to cultural change. We believe that it is more of an education awareness issue rather than a cultural change issue. We are quite concerned as a major industry association that so many of our builder members did not fully understand what builder warranty was. They thought it was their insurance policy. They thought that, if there was a defect, they could claim on it. Many builders still live in that belief. We all know that it

is not; it is there to protect the consumer and it is issued in the rights of the consumer. But many builders still fail to understand that objective.

On the issue of financial assessment, if they do not understand that it is not there for their protection they are not going to fully understand why the financial assessments are undertaken. Also in this State it is virtually coming off the zero base. We have heard about government schemes in Queensland that already do financial assessments. The previous government scheme in Victoria did financial assessments for many years and requested bank guarantees. That was not a practice of the Building Services Corporation. So in this State financial assessment is coming off the zero base. If you have never been asked for it before and if you do not really understand what and who the policy is protecting, there is going to be a lot of attitude and angst in response to it.

But certainly that would represent the minority of builders and not the majority. The vast majority of builders are used to having criteria for assessment set down; whether it is criteria for their building permits, criteria for their development approvals, criteria for their water tappings or Telecom connections. As long as they know the rules they will abide by them. That is probably one of the areas where we have been most critical of all of the underwriters. We know from our discussions that they have not made up the rules as they go along. Most have had the same underwriting standards for many years.

Where they have been very poor is in communicating those underwriting standards and in documenting those underwriting standards, which is why we have pushed hard, together with the Government, to get a transparent—I have probably heard that word more in relation to this subject than any in my life—set of underwriting guidelines issued by major insurers. We are advised by Royal and Sun Alliance that they will be issuing theirs and placing them on their web site within the next fortnight. We understand that Reward already has some guidelines that it provides. We think with that education awareness and transparency in the marketplace—keeping in mind that we are coming off the zero base of financial assessments—there is a great need for awareness and education. That is one of the tasks, as Elizabeth explained, that we see as our fundamental responsibility to provide to our members.

CHAIR: In regard to the reference that you have just made—a reference that Mrs Crouch made a short time ago—regarding a further education process, in what form does the HIA intend to undertake further education?

Mrs CROUCH: HIA has a range of ways to work with builders to educate them about legislative reform or things that will affect their business or operating environment. We run regular member nights. We convene special forums. I referred earlier to builder clinics. We did that with the assistance of the Department of Fair Trading. That was a specific process with key speakers and people involved to try to resolve some individual issues for builders. We have a number of other vehicles. We have a web site that is available nationally. At any given month we will put out a publication for builders, either a building news magazine or a housing magazine. That will feature and profile articles that are relevant to warranty insurance.

We have convened insurance forums. We have another one on the North Coast in September and one on the South Coast next month. They are designed, if you like, to deal with the hot spots where a number of builders are having difficulties so that we can try to progress things individually. Insurance is a very individual business. It is not something to which you can take a blanket approach and say, "One size will fit all." We have had to take a personal approach to these issues and we have sat down with individuals and tried to work out their problems. But at any given time we are out there with various messages for people about the reforms and how they might work within them.

Mr McCARTIN: On that specific issue, a builder assistance program is run by HIA with the support of the Department of Fair Trading and in conjunction with accountants. Those builders who may be experiencing difficulty in achieving eligibility and satisfying financial prudential checks of insurers can sit down with their accountants—which is highly encouraged—and with representatives who are fully briefed in the financial assessment procedures of underwriters. They go through builders' individual circumstances with their accountants to look at how they might be able to structure, work, or progress towards either achieving eligibility or enhancing their current rating. That

one-on-one interface is most critical. It does not always achieve the best headlines and you do not get a couple of hundred people marching, but it does get the best outcomes

Mrs CROUCH: Their efforts are focused on key areas. We understood that HIH had a high market share in a number of key areas. HIH's financial thresholds were lower than any other insurer in the market. So clearly there were problems in Newcastle and there were problems in the Riverina. That gave some indication of where we needed to target some communication activities to try to help people through some issues. That is where our efforts went.

CHAIR: I ask in a slightly different form a question which I put to you earlier. It appears to me to be very much the case that the MBA's submission is essentially pessimistic regarding the recent amending legislation. Your organisation's submission is essentially optimistic. Could you describe to the Committee what I might term the mood of your members in relation to the reforms implemented by the amending legislation? I presume that Mr Meredith is endeavouring to represent the interests of his members and you are endeavouring to do the same thing regarding your members. However, there is a disparity between the two attitudes. Could you tell us what you believe is the mood of your members?

Mrs CROUCH: I might start by perhaps stating that our association has 8,000 members in New South Wales. We build over 85 per cent of the housing stock in New South Wales. We have builders that range from high-rise builders right through to the small guy, plus the manufacturer and supplier base. It is pretty comprehensive.

People who are used to managing their businesses in a particular way, in a way where they were growing their businesses quite constructively, cope with the reforms very easily because they are used to thinking about the financial health and the business management aspects of running the business. Builders who, perhaps, were used to leading more towards Mr Pyers' comment about taking accountant's advice and legitimately managing tax obligations have had more difficulty because in many cases they have to restructure their businesses to cope with the requirements. It is a safe to say that many of our members were already used to the financial requirements because they were already dealing with Royal and Sun Alliance. They are used to a set of criteria that has not changed over time. In the case of Mr Meredith's members, many of those were with HIH, which meant there was a bigger issue to deal with once that insurer collapsed.

That probably reflects that the mood of MBA members would have been more downbeat than the mood of many HIA members, although as a consequence of people now moving across to one of the remaining insurers that has certainly put pressure on the remaining insurers and that has affected people who already had their eligibility and their profile sorted out. Many of our members who were not directly affected by the collapse of HIH were indirectly affected by the tidal wave of the new people who are trying to seek alternative insurance arrangements. We are aware that a number of people are still queued up. This is something we monitor very closely with the insurer. In the case of New South Wales, about tolerances

people are in the queue to be assessed by Royal and Sun Alliance. They are people we try to work with very closely to try to progress the issue. In the case of the Riverina or the North Coast, where we know that HIH had a particularly strong market presence, we put in a big effort to try to deal with any problems builders have had and deal with any issues that are going forward.

Mr McCartin referred to Builder Assist, and I would like to give you an example of one builder in the Hunter area who, perhaps, epitomises an HIH client. It is a house builder who had most of his assets sitting in another place. As a result of going through the Builder Assist program and restructuring his business affairs, which was very difficult at the time, the builder has come out at the end of it reporting that he is now running a business that is better structured and making more money while building less. He is quite comfortable with that because profitability is there. That is a good example of what has happened at the end of the process. That builder is now running a far more sound business, and is a good advocate as a result. It is safe to say that the mood at the moment is still affected by communication difficulties that many people experience. I do not think it is affected by reforms per se because people welcome them, the two and six-year structural period and other reforms.

CHAIR: A moment ago you referred to some 400 builders being in the queue for assessment for insurance purposes by Royal and Sun Alliance?

Mrs CROUCH: Yes.

CHAIR: The previous witness, Mr Meredith, on behalf of the MBA, and the MBA, in its written submission, were quite critical of insurers, in fact the term "appalling" was used. Mr Meredith referred to lost files, phone calls not returned and that sort of thing. What would you say the experience of your members has been in dealing with insurers?

Mrs CROUCH: Earlier, I referred to communication difficulties, and they have been not only about understanding some of the criteria to which Mr McCartin referred earlier, but also about difficulties in dealing with an underwriter that is based in Melbourne and all of the associated problems that come with misplaced faxes, files and so on. Our members have had their share of those sorts of concerns. Fortunately, we have been able to avert most of the instances of people feeling that they needed to fly to Melbourne. I am aware of Mr Meredith's example. Generally, we try to broker solutions at the local level and try to get the insurer here or get them on the phone, if necessary. But there have been instances when communication has been difficult and where files have gone missing. I do not think you expect anything else in a climate where you lose a major insurer and, suddenly, you have to cope with a large influx of business. They certainly were not quite up for that, and they admit that quite freely. As an association, we did everything to assist them with that, but I do not think any sort of planning would assist any insurer for that sort of influx.

The Hon. JOHN RYAN: They were given some assistance from the State Government with regard to staff to assist any assessment of builders, were they not?

Mrs CROUCH: Yes, they were.

Mr PYERS: That is true, yes.

Mrs CROUCH: The issue to keep in mind with this insurance is that it is a very particular type of product. One of the issues about NRMA and other insurers entering the market is that it is not the type of business you can pick up an underwriter out of another insurer, plonk the underwriter into a warranty insurance regime and get the underwriter to write a form of financial guarantee business, which is what warranty insurance is. There is a fairly long lead-in time. In many cases the assistance that was provided to those insurers was about some of the administrative sort of stuff. It could not help them in terms of the number of underwriters who were trained at the time to cope with assessments.

The Hon. JOHN RYAN: But 400 builders seem to be quite a large number. Is that 400 within New South Wales?

Mrs CROUCH: That is correct, 400 within New South Wales.

The Hon. JOHN RYAN: That is a lot of people to still be on the queue for a scheme that has been operational for a couple of months.

Mr McCARTIN: Our assumption is that very few, if any, of them would not have insurance elsewhere. Builders do not get their bricks through one provider; they do not get their plasterboard through one provider and they will not want to get the warranty through one provider. The fact that there are 400 applicants means to us that they are still looking for alternate delivery sources. When the new insurer comes onto the market there will be eligibility applications to them. It does not mean that those eligibility applications are for people without insurance; it means that they are expanding their options, which we encourage them to do. That is the very thing they should do. They should be shopping. They should be trying the pricing, assessment and service structures of those that exist and who is coming. We would be surprised if there were not 400 applicants.

CHAIR: Are you able to say what approximate average time they might have been on the waiting list?

Mr McCARTIN: I had a meeting with both the brokers and the underwriters within the last fortnight, and that was the very issue I wanted to clarify because, although they admit that they are looking forward to a new insurer coming into the game to share a bit of the load as well they still have their servicing issues and we want to clarify what they are. The brokers do a front-end assessment before they pass it on to the underwriter. Brokers are saying that they have approximately a five to 10-day turnaround period before they pass it through to the underwriters who have a similar turnaround period. But that is on the basis of being able to present a cleanskin application. Although builders are used to being in queues, they are not always the best at filling out their information, right down to the basics of forgetting to sign the form or provide all the information, which is why the broker does the preassessment before putting it through to the underwriter for the detailed assessment. Provided that it is a fully complete application you are looking at five to 10 working days with the broker and then another five to 10days for assessment by the underwriters at Royal and Sun Alliance.

Mrs CROUCH: In our last analysis of this issue we understand that up to 70 per cent of the applications went back to builders for some of that very minor information. There was a bit of backwards and forwards before they even got into the system.

Mr PYERS: You also need to consider the 400 in the context of the number of licensed builders in New South Wales, which is in excess of 20,000. There are 120,000 licence holders over all on the Department of Fair Trading list.

Mr McCARTIN: One of the issues we have extensively lobbied the broker and the underwriter about is the centralised process for assessment. Like a lot of national businesses they like to consolidate and centralise their business services, and they endeavoured to do that with their underwriting assessment by basing it out of Melbourne. As soon as you have to pass information, particularly paper-based, interstate there is an opportunity for it to be lost in the post or not come through on the fax. I think that many builders have suffered as a consequence. In response to the lobbying, Royal and Sun Alliance expanded its underwriting team from seven to 15, but more importantly for New South Wales builders five of those underwriters are now based in Chatswood. The bulk, if not all, of the underwriting assessment will be contained within the State to which the applicant is applying. Although it may seem a step away from common business practices, trying to centralise administer services, we think it goes back to a better, old-fashioned, traditional method, particularly when you are undertaking such detailed assessment.

CHAIR: I note that at page 4 of your organisation's submission you say,

> The last resort approach provides a more predictable operating environment for builders, consumers and private sector warranty underwriters as contractual disputes are handled in a more appropriate forum rather than through an insurance company.

Would you are like to elaborate briefly on that?

Mr McCARTIN: Insurers and tribunals, both in Victoria and New South Wales, were being bogged down by contractual disputes that should never have gone to an insurer in the first instance. If it is a building dispute or defect, the builder should attend to his obligations under his contract and carry out maintenance where necessary. If he is not, we have always argued that it should be linked to licensing. If a recalcitrant builder fails to address maintenance or statutory obligations it should be enforced through licensing because it calls all bluffs. We found that under the old system it went into what we called the "Bermuda Triangle" in both Victoria and New South Wales. If an insurer felt it should not be drawn into a claim it would appeal. If consumers felt they were not getting satisfaction from the builder they would look to make a claim on the insurers in the first instance, the same way as they would on car insurance, believing that it was a similar type of coverage.

Again, insurers would look to appeal that process. We found that tribunals were being bogged down in litigation between builders, consumers and insurers, none of whom were really benefiting from the old system. South Australia and Western Australia operate under last resort system with a reconciliation process up front. The parties were drawn together and encouraged to resolve their outcomes. If the builder fails to attend to his obligations then they are enforced by the licensing tribunal. The insurer got involved only in the event of death, disappearance or insolvency. As I said earlier, no new wheels needed to be created. All we had to do was look across at successful

licensing consumer protection systems in Western Australia and South Australia to see how it could operate, then look to harmonise that in New South Wales and Victoria.

Mr PYERS: It is important to pick up on what Mr McCartin is saying. The last resort system runs well when it is paralleled with appropriate licensing systems. Mr McCartin mentioned what happens in other States. In New South Wales we had improvements to the licensing capacity by virtue of the Home Building Amendment Act 2001, and the recent report of the joint committee into quality of buildings suggested further improvements from that point of view. When you consider last resort insurance running in parallel with an appropriate system, we believe it will work.

CHAIR: I note that part 8 of the HIA submission at page five contains eight dot points, and general support is expressed for each of those matters. All the matters relate to the legislation and the current scheme. Does your organisation or its members have any difficulties with the reforms, or foresee any disadvantage for builders? We have received some submissions from small builders, I am not sure whether they are members of your organisation, who are concerned about what they seem to regard as the uncertainty created by the reforms. Is that concern been expressed to you by your members?

Mrs CROUCH: This is an industry that has been undergoing some fairly regular reform in the last few years, and it is extremely difficult for many people to keep up to date with the pace of it. My earlier comment about the need to educate people about the implications of some of these reforms still stands. Clearly, where we have had either building clinics or communicated directly with builders, once we go through the process of what the reforms mean for them in the course of their day-to-day business they are very supportive of those.

We need to separate out the impact of the reforms and in some respects the financial criteria or the financial issue associated with insurers because that is the issue we referred to earlier where there remains continuing communication difficulties but the reforms per se do not present difficulties for builders. We have been asked by the Department of Fair Trading to work with them in putting together a series of documents to support those reforms. We have been asked to work with the department in developing a standards and tolerances guide. The idea is to educate the consumer and provide greater certainty between the consumer and the builder about what their expectations are of the building process. That guide operates very successfully in Victoria.

We are trying to put a series of tools and further information together to assist builders and consumers in the building process as they move forward with these reforms. Generally, people's comments have been quite positive about the two-year and six-year period and certainly the raising of the threshold to $12,000, because there are many small builders who concentrate on pergolas, sheds and other things that directly benefit from that threshold being raised to $12,000.

CHAIR: A submission has been made to the Committee by a group calling itself BFAIR, which apparently stands for Builders For Active Industry Reform. They noted the difficulty in obtaining home warranty insurance and stated, "There is a critical and immediate problem for builders trying to obtain insurance to keep their businesses running. Hundreds of good builders have stopped work and put off their subcontractors and employees because they cannot obtain insurance." Some other submissions made to this inquiry made that observation as well. I note that your organisation's web site contains information that shows that over 97 per cent of builders obtain the insurance they apply for. Could you indicate approximately how many builders are represented in New South Wales of the remaining 3 per cent, if you are able to tell us that, and why would those builders be having such difficulty obtaining insurance?

Mrs CROUCH: My earlier comment about the number of people in the queue is relevant and I think Mr McCartin's comment about which queue they are in—in fact, they might be in multiple queues—means it is difficult to quantify in many cases that 3 per cent, although at any one time those 400 builders that are currently in the queue do represent 3 per cent of the total that is currently being insured so that is probably a good indication that that still remains current. We are aware that the insurer has made direct approaches to BFAIR and I alluded to other groups that have emerged during the course of this issue to try to resolve many of those issues for individual builders. In the case of the Hotondo group of franchises I believe that offer was taken up and there was some significant progress made for Hotondo builders, who are traditionally smaller builders. In the case of BFAIR I do not

believe the offer was taken up despite the offer being made. There are a number of builders within the Hotondo franchise who are no longer working. Some may be due to their own choice and some because they are now working with other builders within the Hotondo franchise but irrespective of that, some groups have taken up insurer's offers to work with them and some groups, including BFAIR, have not necessarily provided a list but Mr McCartin may wish to comment on that.

BFAIR has links with MBA New South Wales so I wonder whether or not we are talking about the same groups of builders across both organisations. Again, because some of those numbers are difficult to quantify on the BFAIR side or people are difficult to identify, it is difficult to make the assessment about whether or not we are talking about the same group of people. However, we need to keep in mind that the 3 per cent could be the same 3 per cent that are in Dexta's queue, the same 3 per cent that are in Reward's queue and most responsible builders will hedge their bet with suppliers and make sure that they have a supply line via various people.

In relation to why some of these builders might have trouble obtaining insurance, a number of things should be looked at. HIH had a lower financial threshold so many people were not required to meet normal financial criteria in order to get their insurance. Some of those people within the HIH tent have had to restructure their business. I understand that the Committee is actually meeting with insurers later in the week but generally the insurer will look at things like whether a claims record is good or bad and whether a builder has a history of going bust. Before the Government embarked on a series of licensing reforms more recently, builders had the capacity to set up phoenix companies. That has been eliminated now but in the past it was possible for a builder to shut up shop because they had no assets in their company, walk away and start again tomorrow with another thing. That has been changing over time. Insurers look at other things like management experience and management practice, whether or not builders have a good relationship with some contractors and how they cost jobs. I referred earlier to the architectural design example where if the builder undercosted a job they may get the job to lock-up stage and then go bust. There are a range of issues that the insurer will look at in relation to making an assessment about the financial and operational performance of a builder.

Mr McCARTIN: The very question raises an issue and that is the reporting of the insurers. One of the reasons it is so hard to quantify the true nature of either the problem or otherwise at the moment is the lack of reporting done by the insurers through the licensing body. Again, with the joint standing committee's recommendations for a commission we would hope that part of the centralised process would be able to create some centralised reporting, again similar to that which exists in the building commission in Victoria, because it is very difficult at the moment to find out at the moment. It is the old Abbott and Costello: "Who's on first, What's on second, I don't know's on third." Who is with Dexta, who is with Reward, who is with Royal and Sun Alliance, who is with all of them, who has eligibility where? There is real confusion of information in the marketplace so we would very much look forward to more concise and mandatory reporting requirements for the insurers as part of future progress.

As far as builders who are struggling to achieve eligibility at the moment or making noise about struggling, we are a boring industry. We do not like change at all. We still build predominantly the same way as we did 50 years ago, with the same sort of materials we used 50 years ago. We do not like change. What we particularly do not like is constant change, which is one of the reasons why we, as an association, were so adamant that the reforms that were introduced were sustainable. We do not want to be back here in 12 months or two years time going through all of this again trying to look for another solution. That is why it was so important that the changes and reforms were soundly based and were coming off successful schemes in other States. We thought we had that foundation so that we could create something sustainable.

We have mentioned a couple of times that many builders lack a lot of knowledge and education in the product. Many builders have been given very good and clear guidance from their accountants for many years as to how to minimise their tax but it leaves them with very much undercapitalised companies. We have to get back to the fundamental requirement of why we have home warranty, and it is for consumer protection. The cold, hard reality is that some builders will not achieve eligibility and I am sure that the vast majority of their peers would support that in that they are taking on the responsibility of creating a habitat which is, for most people, the biggest investment of their life. They need to do that with a sound capital base and they need to be able to illustrate that sound capital base, not a $2 company where their assets are shifted off into an untouchable.

One of the biggest concern areas for any new home buyer is when their builder goes bust during the project. We find a common theme with those builders in that they look to claim progress payments in advance of actual works. They seek to claim variations well in advance of what they are permitted on cost structures and margins far outside of what they signed the original project for. It all gets back to our base of coming off a sound capital base to undertake the project in the first place. Many of the builders complaining at the moment do not like the change and are struggling to achieve eligibility because they have taken the advice of their accountants and do not have the capital adequacy in their business, and that is part of the education and awareness that we see as our responsibility.

CHAIR: I put to you for comment a point made by the MBA in its submission. They say that the period of cover under the amending legislation has been changed from seven years for all the defects subject to statutory warranties to six years for structural defects and two years for non-structural defects. They go on to say that that amendment is isolated to part 6 of the Act dealing with insurers and that the period for cover for defects in relation to other or remaining parts of the Home Building Act remains at seven years. They go on to argue that that creates an inconsistency in the legislation, with potential problems for builders and consumers covered by the legislation in interpreting the period of cover. Do you have a view regarding the point they raise?

Mrs CROUCH: Our legal technical advisers—as I am sure MBA's legal technical advisers have—have pointed out that issue. I understand from the Department of Fair Trading and the Minister for Fair Trading himself that the inconsistency is not there but if in fact that two instruments are not consistent or harmonised, then that is an issue that will need to be dealt with, but at this stage when the issue has been raised with the Government, the intention is for the warranty across-the-board to be two years non-structural and six years structural. That is designed to create greater certainty for consumers and builders about what those two aspects mean. If we look at things like the standards and tolerances guide and other material that is being produced at the moment, that will assist a consumer in saying, "I need to do the right sort of maintenance" or a builder in saying, "I need to go back and repair that because that is within the two years or the six years" or whatever, but I, too, have been advised about the same sorts of issues but have been assured by the administration that that is in fact not the case, but certainly the two issues need to be harmonised to avoid any inconsistencies.

Mr McCARTIN: One of the reasons we were so complimentary of the Victorian and New South Wales governments is that they and their oppositions, who worked at most times in harmony with their colleagues, sought to undertake reforms that in my experience in building control legislation would, in a normal time frame, have taken somewhere between two to three years to achieve and they did it over a period of months, trying to harmonise not just between Victoria and New South Wales but across other States as well. In that rollercoaster ride—and it was very much a rollercoaster ride—there were great efforts made to harmonise across States, but we now have a little bit of work in tidying up and harmonising within State legislation itself and on that point we support the MBA's comments that there is confusion and conflict. We have conflicting advice about how big a problem it will cause but the very fact that the contractual statutory obligations may or do vary from the warranty time frames must lead to confusion and we would like to see that harmonised in the long term as well.

CHAIR: I am not entirely clear on the basis of the evidence you are giving as to whether there is a conflict or not. I understood from what Ms Crouch said that your legal or other advice was that there is not a practical legal problem created whereas Mr McCartin seems to be conceding there is some conflict between the residue of the legislation and the amending legislation?

Mrs CROUCH: It is safe to say that there are conflicting views, and I am sure that the legal advice of the MBA would also have the same thoughts. My comment in relation to that there was as a direct result of discussions with the Department of Fair Trading and the Minister on these issues, and perhaps that is an issue of intent more than legislation about how the legislation would operate. Clearly, to avoid any inconsistency or uncertainty we need to make sure that the two documents are consistent.

The Hon. JOHN RYAN: I refer to a press release that I think was issued by the HIA entitled "HIA wins warranty reforms for builders". Included in the announcement of the new scheme was the statement:

The adoption of HIA's reform package would help reduce warranty premiums by about 15 to 20 per cent.

To the best of my knowledge no insurers have given any indication that there will be any reduction in premium at all. In fact, for products which are similar in South Australia and Western Australia, with the single exception of the amount of sum insured, virtually the only difference between what is available in New South Wales is the premium is nearly double. When would you expect to see some movement with regard to premium? It would have to be said that if this current situation remains the profitability of that scheme will clearly be weighed very heavily to the advantage of insurers?

Mr McCARTIN: We can only speak from our experience with the underwriters who do HIA insurance services. Our advice from them is that they lost gross in excess of $24 million last year. The only way they get that back is by staying in the game. Obviously, if they walk away now they will never recover those losses. We push very hard for premium relief but they made very clear points to us. One is that they are coming off substantial losses, particularly in the major markets of Victoria and New South Wales. They also point out with what is some aggression now that the full scope of the reforms that were agreed by the Victorian and New South Wales governments in March still have not been fully implemented. One of the fundamental items is the $10 million cap and the reinsurance pool created to support prospective claims in that area is still outstanding. That is one of their fundamental issues for staying in the market.

We feel like the meat in the sandwich at the moment. We want premium relief just as much as our members. The insurers are saying that they have debts to recover and the governments still have not delivered on all of their commitments. We find ourselves running back between government and the insurers trying to get an outcome. We think we will have a lot better chance of getting the outcome once the governments have finalised the full extent of the reform package. The 15 to 20 per cent was a figure given to us by Royal and Sun Alliance so they are genuinely looking at premium relief. I would not expect that to be forthcoming in the balance of this year. We are hopeful, but it is again dependent on the trading results of the insurers, that we will achieve it early next year.

The other thing to consider is that the premium relief was offered in response to the reforms which, whilst not fully finalised are mostly finalised, but those reforms only came into place on 1 July. We would expect that the premium relief will come early in the New Year once the reforms have had a chance to bite and are fully complete in their implementation and, most importantly, once the market pressure comes in with competition which is one of the things that we are awaiting in anticipation.

The Hon. JOHN RYAN: When you say the reforms are going to bite, there is no doubt about that one of the groups of people who have been bitten is consumers. Consumers are clearly paying almost the same amount for a product which has considerably less cover than they previously had. What do you say to the position of consumers who are now paying a premium in the order of $800 for a standard building project and the builders completes, say, to the point of having the frame upstanding, the consumer delivers approximately two instalments of the payments and a dispute arises perhaps because the slab is seen to be cracking? The dispute winds up in the Consumer, Tenancy and Trading Tribunal for over 12 months which costs a considerable amount of money with regard to trying to get the requisite consultants, legal advice and so on. I know of some consumers who have paid up to $30,000 to complete litigation of that sort of nature. Over the 12-18 months the dispute continues in the tribunal virtually the entire frame becomes unusable. It is discovered the slab is no longer suitable. Clearly the limit placed within the policy of 20 per cent in the instance of building work will not cover the level of the costs incurred by that consumer. What can we do with consumers who are affected in a devastating manner and well under the amount of capacity to claim?

Mr McCARTIN: I will try to answer the many issues you have raised and you can jog my memory if I miss any along the way. The first point is the very issue of builders going bankrupt or disputes arising during the course of construction which is one of our major concerns and one about which we believe the issue of progress payments needs to be more closely monitored, examined, audited and enforced. The second point is with regard to disputes that may arise. Having been a builder I know that on a slab like the example you used, the homeowner who may be a butcher, baker or candlestick maker and not in the construction industry, will expect the surface on that slab to be like a sheet of glass.

The Hon. JOHN RYAN: I am not disputing that. I am saying that let us imagine for the sake of the argument that there are a few piers missing on the slab.

Mr McCARTIN: It is a very good example because one of the things that has contributed to those types of claims going into a full and drawn out litigation process, as we mentioned earlier, is the lack of a standards and tolerance guideline that can be referred to as a third independent source for both consumers and builders to say that the cracking is within tolerance and the builder will get on with the job. If it outside tolerance they have a clear benchmark to go to that step of mandatory conciliation and not to stall and delay the consumer—

The Hon. JOHN RYAN: Mandatory conciliation is not a feature of the scheme now?

Mr McCARTIN: No, it is not.

Mrs CROUCH: We pushed for mandatory conciliation.

Mr McCARTIN: Your example is possibly too good because it gives us too many answers or issues to address. There is the issue of standards and tolerance guidelines and then to conciliation. Having a standards and tolerance guideline that is clear and available to all parties, conciliation can be the first filter. We then get to the scope of coverage or 20 per cent of the $200,000. I can only speak on what is given to us by the underwriter for the HIA insurance scheme, but the average claims cost or payout is under $40,000 with Royal and Sun Alliance. Therefore, we consider that the $200,000 with the 20 per cent is more than adequate.

The Hon. JOHN RYAN: That is obviously a calculation made on the basis that legal expenses were not included. The new Act, in fact, includes legal and consultants costs that can be included in the terms of the litigation which, of course, were always there before but nevertheless they are costs which are relevant. Plenty of consumers have put the argument to me that because this is now an insurance scheme of last resort, they can eat up almost the entirety of what they are able to claim, particularly when it is limited the 20 per cent of the total contract price, before they even get to claim for the rectification work that might be required for the problem.

Mrs CROUCH: If I may comment, the critical aspect is the whole system that consumers go through in terms of dispute. Mr McCartin referred to the standards and tolerance guide. The Building Conciliation Service, while it is still in its infancy, were strongly pushing to have mandatory alternative dispute resolution up front so that you did not have to have a situation where you had recruit building experts and everybody which would eat into some of those costs, as you rightly point out. You actually hit it at the very early stages and try to resolve the issues. One of the benefits of the old scheme is that that used to happen. We used to be able to get somebody out on site to look at that slab to which Mr McCartin referred and now with the assistance of a standards and tolerance guide– and to be honest with you that is not far off because it has already been written in Victoria and it purely needs to be amended for the New South Wales situation and adopted. It is not like it will be six or 12 months down the track before that is in place.

Previously we used to have the capacity to have early intervention in a dispute on site, where necessary, to say that it is or is not an appropriate crack, and to deal with it then and there so that people did not get into this downward spiral of lawyers and experts being brought by both parties and before you know it you have got half a dozen people behind you for whom you are paying top dollar to help you with the same crack that you started out with originally. One of the problems is that when the scheme was privatised we did not take across with it some of those things that used to work quite efficiently under the old regime. Some of the reforms that are in place now are about reintroducing some of those systems.

The Hon. JOHN RYAN: But there are no reforms, which other than the recent report of tabled last week, that the State Government is considering at the moment that even approximate the sort of dispute resolution service to which you are referring?

Mrs CROUCH: I beg to differ as some of the home building reforms clearly were about taking that direction. I was about to say they have not gone far enough so your comment is quite valid from that point of view. We pushed for mandatory alternative dispute resolution. We pushed for on

site inspectors and some of those things have not been picked up but clearly the home building reforms that have been instigated already are heading in that direction. We believe they need to head a bit more quickly.

The Hon. JOHN RYAN: They clearly need to go further?

Mrs CROUCH: Yes, that is right. This should be about stripping out these disputes early and helping people on site so that you do not end up in that cycle of escalating costs.

The Hon. JOHN RYAN: One of the features of the Queensland scheme is a provision for termination where it becomes pretty obvious that for reasons, perhaps sometimes of the conduct of the builder, more often or not is the area where there are concerns. I have certainly plenty of consumers and constituents who have referred to the conduct of builders and it is necessary to terminate the contract. It seems to me unfair that if the builder's conduct has been inappropriate that the consumer is then led along the line—and one cannot imagine that the builder is going to be exactly of a mind to conciliate a dispute under those circumstances—there needs to be some capacity for the insurer to take over liability for a claim and then perhaps pursue the builder afterwards in circumstances where the conduct of the builder is inappropriate?

Mrs CROUCH: We need to look at the role of the regulator in that instance. Regulators are the people who hold the pen in terms of licensing and control of a builder who will or will not be in an out of the industry. A number of things in your "Quality of Building" report recommend registers and other things about how you actually track a performing builder whether good or bad. We need to look at the role of Department of Fair Trading, or whatever agency it happens to be in that situation. If you have got a builder whose conduct is not appropriate on site then the regulator needs to say "These are your options, builder. We either pull your licence, fine you or whatever." It is about their role.

The Hon. JOHN RYAN: They would then be sending a builder back who might have conducted themselves inappropriately to a site that does not want them?

Mrs CROUCH: If I could complete my answer. In a situation where it is not appropriate to send back a builder, as there might be threats of violence of whatever, then the regulator can direct another builder to do that and can charge the first builder. That could be an outcome, if you like, of the mediation or the direction of the tribunal that another builder goes in to rectify, but the first builder pays for it.

The Hon. JOHN RYAN: Under the current scheme that can be several months down the track before that all gets established in the tribunal and ordered?

Mr PYERS: Indeed, but Ms Crouch is referring to separating out that process from the current tribunal process which you have correctly identified as being a problem and you say that by administrative process—off the top of my head I cannot remember whether it got into the Home Building Amendment Act 2001 but it was part of the debate surrounding that legislation—then you strip that power away from the tribunal and you give that power administratively to the regulator, in this case the Department of Fair Trading. Basically, that means it becomes an administrative decision of the Department of Fair Trading and if that decision is to be challenged obviously that becomes a matter for the Administrative Decisions Tribunal but at least it provides a greater certainty and I suppose at the end of the day hopefully a greater speed in decision making from the point of view of the consumer.

The Hon. JOHN RYAN: It would have to be agreed that that would be unusual behaviour on the part of the Department of Fair Trading now and it would certainly require some pretty significant reform to the dispute resolution service to get that sort of problem resolved quickly, would it not?

Mrs CROUCH: I think it is very clear that up until recently the Director-General has not had some of the powers to be as forceful as he can be now.

The Hon. JOHN RYAN: He has had them for nearly 12 months now. It is not that far back in history. He has had many of those powers now for in excess of 12 months.

Mrs CROUCH: In fact we have seen a number of disciplinary actions go forward in relation to that.

The Hon. JOHN RYAN: Only about a dozen.

Mrs CROUCH: Even so, that is a start.

The Hon. JOHN RYAN: And some are the same builders doing it again because they got their licences back from the ADT or the period of time expired and they needed to be done again. Certainly that would not represent a fraction of the people who have approached my office with complaints about misconduct of builders.

Mrs CROUCH: The issue then becomes the whole package, as I referred to earlier. We need to look at the powers of the regulator, we need to have a look at the powers of the Tribunal, we need to have a look at the dispute resolution process. I must say that in meetings with the former Fair Trading Minister with a number of the major builders who build most of the housing stock in New South Wales, one of the issues that was raised was this issue of having early intervention. They were very supportive of that because they are also locked up in this endless round of litigation and experts and all that sort of thing. Nobody is winning there. That affects the final cost of their product. Ultimately we want to maintain affordability in this whole issue and at the same time produce a good result.

The Hon. JOHN RYAN: I just simply say to you that without some additional reforms to the licensing regime and the building disputes regime, consumers could well be in some difficulty, given the level of cover they are able to achieve with regard to the new reforms to the scheme, could they not?

Mrs CROUCH: I think the other issue to keep in mind is that there has not been a big effort made in educating consumers. Some of the reform package, and indeed some of the recommendations of your other committee are about giving consumers an appropriate level of support. Keep in mind that out of the 44,000 houses or whatever that we build in New South Wales we have a very small proportion of disputes, so we need a system that is not going to, if you like, burden the whole building process for the sake of a very few people who actually do the wrong thing.

The Hon. JOHN RYAN: You would not like to be one of the people who gets the wrong thing done to them.

Mrs CROUCH: No, indeed. But I think it is important also and, as I said, as your committee rightly pointed out, this is a contractual arrangement between a builder and a consumer. It is important that they both have appropriate information by which to prosecute that contract. One of the issues we have had is that a consumer's expectations have been quite different from what a builder's expectations might have been in some contractual arrangements which is why this standards and tolerances guide becomes so important, because if I know I am paying you to build me a Rolls-Royce then these are what my expectations are for a Rolls-Royce would be. If I am in fact paying you to build me a Volkswagen then that is what my expectations should be. We are seeing many instances where consumers on the flip side have actually gone directly to the insurer and ended up with a betterment because they have ended up having their house completed to the value of whatever when in fact they were only building the Volkswagen and they have gone for the Rolls-Royce.

The Hon. JOHN RYAN: With regard to standards and tolerances, that document in Victoria does not deal with many of the issues that I would call look and feel aspects of home; they are things that consumers pay for. Would you not agree that, particularly given the nonstructural area, there would be a need to add to that document what the consumers rights were with regard to look and feel items?

Mrs CROUCH: Apart from the standards and tolerances guide we also have a home owner's manual for consumers. Part of that is about the touch and feel type of issues, about the maintenance issues. So, what can you expect or how can you expect your home to perform in the first X number of years., what sort of routine maintenance do you need to do if you see a cracked tile and water behind

it? What should you do in relation to those sorts of issues? So you are quite right, you need to pick not only the technical aspects of it but more at the front-end all of the touch and feel aspects about how my home should perform. We have had that guide for many years now. Obviously with the reforms we need to finetune some of those things, which is what is happening now, but the reality is those guides are available.

The other thing you might be interested in, many of our builders are now embarking on a maintenance program for their homes. Part of the contractual arrangement is that they are actually putting in place a maintenance program. A bit like in the first 12 months or two years of having your motor vehicle you get X number of routine services; a number of our builders are now embarking on the process and they are finding at the end of that process they are having far less problems with major issues down the track.

Mr McCARTIN: Whilst the content of the reforms was agreed consistently between Victoria and New South Wales, their administrative structures to implement them are quite different. Victoria has had a far more simplistic structure with a centralised building commission which means that their ability to provide and implement a number of reforms more quickly has been a little simpler for them, which is one of the reasons why we will be supportive in the future of the establishment of a home building commission here in New South Wales.

The Hon. JOHN RYAN: I think it is actually called a building compliance commission.

Mr McCARTIN: I stand corrected.

The Hon. JOHN RYAN: That is what the report refers to.

Mr McCARTIN: The other thing that exists within Victorian legislation that simplifies the standards of workmanship issues, with so much of our construction now being by major project builders who are selling from display homes, many owners do not want anything more or anything less than not what they saw in the display home. They are happy with the display home. Under Victorian legislation you must match identically the standards of the construction of the display home. Any failure to do so is the builder's responsibility, not the homeowner's. Having such a simple provision within the legislation eliminates a lot of the disputes because if that is how it is in the display home that is how it gets built and that is all there is to it.

The Hon. JOHN RYAN: I would not disagree with that.

Mr McCARTIN: And, "Builder, if you haven't matched that, go back and match it".

The Hon. JOHN RYAN: Our legislation just says reference can be made to the display home. It does not actually suggest you have to get that. I agree with that.

Mr McCARTIN: I support your comments, there need to be further amendments both to the process and also to legislation. The States have been very good at looking across borders and not reinventing wheels. There are probably further opportunities for them to do that.

The Hon. JOHN RYAN: One final question with regard to deeds of indemnity. The Committee has received some evidence that insurers are still requiring builders—notwithstanding apparently public announcements to the contrary that this would no longer be required—to provide deeds of indemnity. Similarly, what has been suggested otherwise, if a deed of indemnity is not required, they may not require an indemnity over the house but they might require the builder to practically sell the house and put the assets into the building, which is pretty much the same thing. Would you care to comment?

Mr McCARTIN: Deeds of indemnity are a two-edged sword in a political sense in that they probably drew the most angst from the small builders who had to link them back to their greatest asset, their family home, but in a medium to larger sized company the deeds were actually quite welcomed because they did not tie up capital and allowed them to link multiple or different trading entities and trusts. So whilst there has been some gratitude at removing them from one end of the market, there has been angst from the other end of the market. The insurers have tried to take a middle

ground—and you can discuss this with them personally—but from where we sit they appear to have tried to take a middle ground, they have abolished general deeds of indemnity in an overall trading sense but they have allowed the provision of job specific deeds so that particular builders who may, because of particular projects, have problems in achieving either their turnover or project limits, can do so with the provision of a job specific deed which, at the completion of that project, is then removed. It is a middle ground approach.

The second part of your question about removing the general deeds of indemnity has just necessitated changing them, looking through the bank guarantees or capital injections, is very true. That is part of the double edged sword as I mentioned.

CHAIR: Is there anything you wish to say before we conclude?

Mrs CROUCH: Just a couple of other issues. We are more than prepared to provide the Committee with any other economic industry data that would assist you. I think one of the common themes that has been trotted out in the media is that the industry stalled and that thousands of people are out of work. I think you would see from the industry and economic data that that is not the case. So we are more than prepared to provide you with some additional data that may assist you in relation to that.

We have been very conscious of the impact of the warranty insurance issue on the small builder in particular and on new entrants to the industry; apprentices who have finished their time and are starting their own business or whatever. We have worked very closely with AON and with Royal & Sun Alliance to develop a range of packages or a range of insurance policies to assist those builders in particular. Two of them that come to mind are something called rapid access and new builder access which we may have referred to in our submission. Rapid access was designed for the smaller turnover builder to give the very minimal financial requirements and to get them over the line very quickly. That worked very successfully for a large number of smaller builders. New builder access was designed to help a new builder enter the market and grow incrementally in a way that was sustainable so that they could build their business quite successfully and not face some of the difficulties that many small new businesses face when they first start out. I think it is important to make reference to both of those initiatives which were designed to assist those two groups.

The issue of the insurance generally, obviously we are all keen to see some new entrants to the market. There is a lot of talk amongst various groups. MBA of course are trying to pursue their own fund. I think it is worth noting that MBA in Victoria have been successful in structuring an arrangement with insurers there. So hopefully MBA in New South Wales may pick up something from their colleagues in Victoria in relation to doing some of these things and look at ways to get a bit more capacity into the market.

Mr McCARTIN: Just in summary, to reiterate, our objectives at the commencement of the reforms, were something sustainable and competitive and we believe the Victorian and New South Wales governments have got it right and they did so by not having to reinvent any wheels; they looked at successful trading schemes in the western States and have been able to harmonise them into their local States. We believe with that solid foundation we are starting to see the fruit from that being borne now with household name insurers like NRMA genuinely looking to come into the market. We would encourage you to speak to them yourself to confirm that.

Our builders are generally satisfied that there are those who will not achieve eligibility and they are not having backs turned on them, they are being assisted through other programs.

Mr PYERS: Finally, from my point of view, just to stress again the importance that the New South Wales reforms have ensured the maintenance of private warranty insurance with more competition coming into the marketplace and neither a private nor a public sector monopoly under the protection of APRA and that is all-important, in our view, for the benefit of builders, and, more importantly, consumers.

CHAIR: Thank you very much for the Association's submission and for your evidence this morning. It is very much appreciated. We also appreciate your offer of further advice or assistance to the Committee if we should find it necessary. We think it is likely.

(The witnesses withdrew)

(The Committee adjourned at 1.15 p.m.)